

No. 12946

United States
Court of Appeals

for the Ninth Circuit

AMERICAN CRYSTAL SUGAR COMPANY, a
corporation,

Appellant,

vs.

MANDEVILLE ISLAND FARMS, INC., a cor-
poration, ROSCOE C. ZUCKERMAN and G. K.
EVANS,

Appellees.

Transcript of Record

In Two Volumes

Volume II

(Pages 401 to 817)

Appeal from the United States District Court
for the Southern District of California
Central Division

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Mr. Arndt: But Crystal did ship into Oxnard, and Crystal did pay the additional cost.

Mr. Works: We stood the freight of all these Oxnard shipments. It didn't cost them anything. [115]

The Court: What I am getting at is this: From an economical point of view, Clarksburg was the most economical outlet, was it not?

Mr. Arndt: That depends.

The Court: That is in dispute, is it?

Mr. Arndt: Yes.

The Court: All right. We will take five minutes recess.

(Recess.)

Mr. Works: I don't think we answered one question which your Honor asked before the adjournment. That is the reason as to why these things were done. We shall have evidence along that line, your Honor.

Mr. Arndt: We intend to argue from certain evidence as to what the reason was, too, your Honor.

The Court: I realize that, but I was trying to ascertain whether there was any direct testimony, or whether we would have to rely on inferences drawn from certain facts.

Mr. Arndt: In the same manner, I wish to read portions of the deposition of Lester J. Holmes. Item 1 commences on page 2 of his deposition.

“Q. What is your name, please?”

“A. Lester J. Holmes.

(Deposition of Lester J. Holmes.)

“Q. What is your connection with the American Crystal Sugar Company? [116]

“A. Manager of the Clarksburg factory.

“Q. How long have you been manager of the Clarksburg factory?

“A. Since it was built. I started in the course of construction by Amalgamated Sugar Company in 1934. However, the American Crystal didn't take it over until '36.

“Q. Was the American Crystal Company operating in California at the same time the Amalgamated was operating, or did it succeed to or acquire Amalgamated?

“A. Well, it was operating in Oxnard, but acquired the Clarksburg plant in an interchange with Amalgamated in 1936.

“Q. Then when Crystal took over the Clarksburg plant, you then became connected for the first time with Crystal?

“A. Directly, yes.

“Q. Was Amalgamated a subsidiary of Crystal or a separately-owned company, as far as you know?

“A. Well, not exactly a subsidiary. They had pooled their interests in earlier years, and then subsequently withdrew, each taking back their separate interests.

“Q. Now, in this case, certain interrogatories have been answered on behalf of the defendant herein, and in connection with these interrogatories certain intercompany correspondence has been furnished. Now, I want to show you a [117] copy of a

(Deposition of Lester J. Holmes.)

letter which appears on page 24 of the answers to the interrogatory and purports to be a copy of a letter from Lester J. Holmes to Denver office, attention of H. E. Zitkowski, and ask you to read that.

“Now, have you read that letter?”

“A. Yes.

“Q. I call your attention to this portion of the letter in the second paragraph, in which there is reference to a freight absorption. What is a freight absorption?”

“A. This is a freight absorption referred to in which sugar is moved from the factory to the point of destination. That is strictly on sugar.”

No. 2 starts on page 4.

“Q. Explain how this freight absorption arose.

“A. Well, let me put it this way, first, that I do not handle any of the sales end of it, so I am not entirely competent to discuss that, only having just general knowledge of the plan. [118]

“Q. Then when you received this letter of September 12, 1938, that referred to a freight absorption, did you have any idea what it meant?”

“A. Oh, yes. I am not trying to hedge the question.

“Q. What did it mean to you when you received the letter?”

“A. It means that where sugar is sold at any distance from the factory, there is a freight absorption into other territories in which the final net to the grower is arrived at under the provisions of the contract. If the sugar is sold locally there is more return to the grower. If sugar has to be transported to the

(Deposition of Lester J. Holmes.)

far east there is a deduction for freight, which is taken into account.

“Q. Who handled the sales of sugar from the Clarksburg factory during 1939, '40 and '41?

“A. I believe we had our own company office set up in San Francisco in those years, although I would have to check that.

“Q. Who was in charge of that office?

“A. Mr. Hardy.

“Q. What was his first name?

“A. M. C. Hardy.

“Q. What was his title or office with the company? [119]

“A. Sales manager, western division.

“Q. Is he connected with the company at the present time? “A. Yes.

“Q. Where is he located?

“A. San Francisco. May I correct that name? His name is M. W. Hardy, not M. C.

“Q. Then he is the man who had charge of sales during those particular years, is that correct?

“A. To the best of my knowledge.

“Q. Now, where this letter goes on to state that the grower stood 50 per cent of the freight absorption, just in what manner did the grower stand 50 per cent of any freight absorption?

“A. At a certain point in the contract the assumption is that the proceeds of the sale of sugar are theoretically arrived at by a 50-50 basis. Therefore any charges that would arrive from the sale of sugar at a far destination would be used in determining the net

(Deposition of Lester J. Holmes.)

return to the grower.

“Q. Now, what do you mean when you say a certain point in the contract?

“A. I believe that it was around three and a half cents per hundred net. I would have to refer to the contract definitely to prove that. [120]

“Q. Now, was any sugar that was manufactured from sugar beets at the Clarksburg factory shipped to Southern California for sale?

“A. I would have no record—no knowledge of that.

“Q. That is something that this gentleman from San Francisco would know about.

“A. That is right.

“Q. Then when you wrote to the Denver office and made reference to freight absorption, you merely had a general knowledge that in certain instance there was an absorption of freight, and in certain instances there was not an absorption of freight, is that correct? “A. That is right, yes.

“Q. When you wrote this letter you assumed that where there was a freight absorption the grower stood approximately 50 per cent of the freight and the company stood approximately 50 per cent of it, is that correct? “A. That is correct.”

Now question or item No. 3 on page 7:

“Q. Now, you refer to this 50 per cent as being at approximately 3.5 in the contract. Now, when the return was above or below 3.5 how much off the 50 per cent situation was it?

(Deposition of Lester J. Holmes.)

“A. I don’t recall the percentage at all. I [121] would have to do some figuring on that.

“Q. Did it vary as much as 25 or 30 per cent from the 50 per cent?

“A. Oh, no. It may be 49 per cent, it may be 51, it may be 52. In some cases it got down, I think, to 48.

“Q. But for practical purposes when you discussed these contracts during 1939, ’40 and ’41 with the growers, you discussed it on the basis that approximately 50 per cent of the net return from sugar sales went to the grower, and approximately 50 per cent went to the refiner, regardless of what the particular percentage was, whether it was 3.5 or some other return, is that correct?

“A. I think we could say that is approximately correct.

“Q. Now, isn’t it a fact that these contracts that were used in 1939, 1940 and 1941 were often referred to by you as 50-50 contracts?

“A. Yes, I probably did.

“Q. Weren’t they often referred to by the growers as 50-50 contracts?

“A. On the sale—on the net returns from sugar, yes.

“Q. Now, in this same letter there is a reference [122] to competition with cane. Now does that cane refer to sugar produced from sugar cane?

“A. Yes.

“Q. Now, in 1939, 1940 and 1941, did Crystal produce any sugar in California from sugar cane?

“A. No.

“Q. Did Spreckels?

(Deposition of Lester J. Holmes.)

“A. They own the Sea Island plant, which is a part of the Spreckels Sugar Company.

“Q. Did Holly?

“A. Not to my knowledge.”

Now, item 4 starts on page 10:

“Q. Did you have anything to do with the discussions among any of the officers of Crystal in which the decision was reached to use this method of pooling net returns during the years 1939, 1940 and 1941?

“A. May I ask that again? Did I have any part in the decision?

“Q. Yes.

“A. I would answer that—I would say I had no definite part in the decision, although I was consulted and my advice given to Mr. Zitkowski.

“Q. When were you consulted?

“A. Well, I presume that was when we first [123] started to bring the matter up. I have no definite recollection as to dates or anything.

“Q. Now, as manager of the Clarksburg plant just what were your duties during 1939 and 1940 and 1941?

“A. My duties were to make the ordinary contacts, handle the company business and generally all the agricultural contacts that were made in that line of business, but I did not have anything to do directly with the operating of the sales division.

“Q. All the contacts then with the growers were handled by you, is that correct?

(Deposition of Lester J. Holmes.)

“A. That is right.

“Q. All questions of sign-up of growers or things of that sort were handled by you?

“A. That is right.”

Now, item 5 starts on page 13:

“Q. Now, I call your attention to line 30, page 26, and line 1 on page 27 of these answers to the interrogatories, which is a part of the same letter. This particular portion reads:

‘In other words, we should proceed on the assumption that we will not take other companies’ growers.’

“Q. Did you ever receive any instructions from Mr. Zitkowski or Mr. Wilds or anyone else connected [124] with Crystal to the contrary of this particular statement that I have quoted?

“Mr. Works: What page and line is that?

Mr. Arndt: Page 26, line 30.

“Mr. Works: The question was, did you ever receive any instructions to the contrary of that statement, if you know?

“The Witness: I don’t recall of any.

“Mr. Arndt: Q. You mean by that, you don’t recall whether you did or not or that you don’t recall that you did receive any such statements?

“A. I don’t recall that I did receive any such statements.

“Q. The best of your recollection is that you received no instructions to the contrary, is that correct?

“A. That is right.”

Then item 6 starts on page 14:

“Q. Now on page 34 there is a copy of a letter

(Deposition of Lester J. Holmes.)

from you to Mr. Zitkowski, dated October 12, 1939, and commencing at paragraph 23 it states:

‘In paragraph 5 there is a growing demand that the companies pay on their individual sales net rather than on the net of all factories.’

‘Now, is it true that prior to October 12, [125] 1939, there was a growing demand among the beet growers with whom Crystal dealt in Northern California that the companies pay on the individual sales net rather than on the net of all factories?’

‘A. Yes.

‘Q. Now, on page 45 of these interrogatories—— on page 44 of these interrogatories starts a letter from Mr. Zitkowski to you, dated October 20, 1939, and on page 45, beginning at line 26, the following sentence:

‘There is also a limit to the tonnage we can transfer to Oxnard and under conditions existing this year we have exceeded that limit of the tonnage that can, without cost to the company, be transferred.’

‘Who determined whether the sugar beets grown in Northern California and contracted to Clarksburg should be refined at Clarksburg or refined at Oxnard?’

‘A. That was determined through consultation with the Denver office and the Oxnard manager, Mr. Rooney.

‘Q. Now, explain what is meant by the words ‘there is also a limit to the tonnage we can transfer to Oxnard.’ What was that limit in 1939, ’40 and ’41?’

‘A. It would be the operating efficiency of the Oxnard mill. In other words if the Oxnard mill was not

(Deposition of Lester J. Holmes.)

running to capacity it cost a certain amount per [126] day to operate and we could ship a tonnage of beets down there, assuming that the overhead would pay part of the freight cost, and that is the limiting factor. When you get above that point, why, then, you begin to run into another expense.

“Q. During 1939, '40 and '41 which beets came to maturity, ready for harvesting first, those grown in Northern California or those grown in Southern California?

“A. Ordinarily, Southern California-San Joaquin Valley comes in first.

“Q. Now, when you say ‘San Joaquin Valley’ do you include San Joaquin County where the Mandeville and Zuckerman and Evans beets were raised?

“A. No, I do not.

“Q. What do you include?

“A. I would say that we roughly consider the Bakersfield area, Wasco, and that area in there.

“Q. Then what would come in next? Which section of the state?

“A. Speaking of the state, we would, in the Sacramento area come in, generally, about 30 days later than the Oxnard area.

“Q. Now, the Southern California coastal area, what did that include? What portion of the [127] state?

“A. I am not entirely familiar with that, but I would say as far as Santa Maria.

“Q. Now then did the Oxnard factory commence its refining operations before or after or at the same

(Deposition of Lester J. Holmes.)

time as the Clarksburg factory during 1939, 1940 and 1941?

“A. I couldn’t answer as to the start without referring to some facts about it, but I will say we were operating during September and October at the same time.

“Q. Now, is it true that there was a more or less fixed overhead of charges at the Oxnard plant and at the Clarksburg plant so that the greater tonnage of beets that were handled at either place meant a less overhead cost per unit of beets?

“A. That is right.

“Q. Then the purpose of sending beets from San Joaquin County, for example, to Oxnard was to reduce the unit overhead at Oxnard, is that correct?

“A. Not entirely.

“Q. All right. What other purpose was there, then?

“A. If we had more beets than we could efficiently handle at the Clarksburg plant in order to get them out in the proper season in order to expedite harvesting, we sent the beets to Oxnard rather than to delay [128] harvest in the island.

“Q. Now, in connection with the Mandeville and Zuckerman beets, the answers to the interrogatories specify a particular amount of tons that were shipped each year to the Oxnard plant, but insofar as the Evans beets are concerned, the interrogatories merely state the Evans’ beets were mingled with other beets and it is impossible to tell what particular tonnage of

(Deposition of Lester J. Holmes.)

the Evans' beets went to Oxnard. Now, will you explain how that difference happened?

"A. The Mandeville beets were the only beets grown on Mandeville that year. That is, in other words, we had the entire contract on Mandeville Island. On American Island where the Evans beets were grown these were several other growers, all delivering beets at the same time and loading onto the same barge, so it was impossible, after we had received them, to follow that particular bunch of beets through, and we have no records as of this date as to whether all of those beets came to Clarksburg or whether the barges were delivered to Stockton and then shipped to Oxnard.

"Q. Now, when the Zuckerman beets were sent to Oxnard were they loaded at Mandeville on barges and the barges then taken to Stockton where they were trans-shipped to freight cars? [129]

"A. Freight cars—to gondola or sugar beet racks, whichever was furnished.

"Q. When I speak about freight cars, I am not referring to a particular type of car.

"A. Yes, I see.

"Q. I am merely referring to the particular type of transportation.

"A. By rail. They were shipped by rail.

"Q. By rail, yes. Were the growers informed at any time as to whether their beets were to go to Clarksburg or to Oxnard during those particular years? "A. No."

(Deposition of Lester J. Holmes.)

No. 7 is on page 24:

“Q. Now, referring to a letter that commences on page 49, which is a copy of a letter from Mr. Holmes to Mr. Zitkowski, the first paragraph refers to a meeting between Frank and yourself. Now, who was Frank?”

“A. Frank Cleveland, agricultural superintendent.

“Q. It refers to a meeting held ‘last night.’ Was a meeting held on October 30, 1939, between Frank and yourself with a growers’ committee of the Central California Beet Growers Association?”

“A. I presume that is right, held October 30th.

“Q. Now in your letter you state, commencing with [130] line 15:

“ ‘The first objection was that the agreement providing for net selling price based upon the average of the three companies is entirely wrong in principle and this should be stricken out.’ ”

“Was that there stated by the growers’ committee at that meeting?”

“A. Presumably so.

“Mr. Works: Mr. Arndt, at this time may I advise the witness that he may refresh his recollection with reference to these letters?”

“Mr. Arndt: Oh, yes.

“Mr. Works: You have that right.

“Mr. Arndt: Well, I assumed that he had them.

“Mr. Works: Instead of presuming, you may re-

(Deposition of Lester J. Holmes.)

fresh your recollection according to the letter as to whether it did or did not happen.

“The Witness: Oh, well, it specifically is stated in here that they were opposed to the joint net.

“Mr. Arndt: Q. Now, in line 24 of the same page 49, it says:

‘As far as I can ascertain this feeling is general.’

“With your memory refreshed by that, is it true that as far as you could ascertain on October 31st, 1939, [131] there was a general feeling among the growers that the agreement providing for net selling price based upon the average of the three companies was wrong in principle and should be stricken out?

“A. Yes.

“Q. Now, I next call your attention to lines 27 to 29 of the same page:

“‘However, they were rather outspoken in their condemnation of the policy with other companies.’

“Did that also refer to this same provision of net selling price based upon the average of the three companies? “A. Yes.

“Q. Now, on page 52 commences a letter dated November 6, 1939, from Zitkowski to yourself. Would you look over that copy of that letter, please, with particular reference to the second paragraph?

“A. Yes.

“Q. Now, I call your attention to the following: “The principal objection there is to attain, as far as this is possible, a higher average net receipt for sugar by avoiding as much as possible cut-throat com-

(Deposition of Lester J. Holmes.)

petition, cross-haul of sugar and other similar practices.'

"What cut-throat competition did you know of at [132] that time?

"A. As I stated before, I have no dealings with the sugar sales department.

"Q. So then that meant nothing to you at all, is that right?

"A. That is right.

"Q. Now, where it said 'cross-haul of sugar', did that mean anything to you?

"A. Only in general terms.

"Q. Then when it said 'other similar practices' did that mean anything to you?

"A. No.

"Q. Now, referring to the first sentence of that same paragraph where it says:

" 'Concerning the first objection which refers to an average net selling price for the sugar produced in Southern California, I think you, yourself, understand the principles behind this very thoroughly.'

"Now, had you ever discussed with Mr. Zitkowski or Mr. Wilds the principle behind this average net selling price? "A. Yes.

"Q. When?

"A. What was that?

"Q. When had you discussed it? [133]

"A. When we first talked about putting the plan into operation.

"Q. When was that?

"A. I believe it was in 1938."

(Deposition of Lester J. Holmes.)

The next is on page 30, line 16:

“Q. I see. Now, on page 59 is a letter from Holmes to Zitkowski and I call your attention to the last paragraph on page 59, which states:

“‘I believe there are two things to which the growers chiefly object. The first is the net sales price based on the average of these three companies, and the other is the deduction of one-half per cent for each five cents below \$3.25. They feel that the 50-50 contract should be carried in the lower bracket.’

“Now, where reference is there made to the 50-50 contract does that refer to the standard, printed contract of Crystal of the same type as Mandeville and Zuckerman had?

“A. That is right, the same contract.

“Q. Now, with your memory refreshed by that letter, is it true that on September 27, 1940, the growers in Northern California were objecting to a net sales price based on the average of the three companies? “A. Yes. [134]

“Q. Now, continuing to read from this same letter, line 29, page 60:

“‘As far as I can find out, there was no demand for 50 per cent of the pulp and molasses, although at Woodland I noticed in the paper they demand 50 per cent of the sugar on a 92 per cent extraction, and also 50 per cent of the pulp and molasses.’

“Now, was any molasses made from the sugar beets at the Clarksburg factory during '39, '40, and '41?

“Oh, yes.

“Q. Was that sold by the company?

(Deposition of Lester J. Holmes.)

“A. Yes.

“Q. Was any of the pulp from which the sugar was extracted sold by the company?

“A. Yes.

“Q. Now then as I understand the 50-50 contract in use during 1939, '40 and '41, in arriving at the particular figures that were used on a 50 per cent basis, all that was taken was 50 per cent of the net return of sugar and nothing was allowed the grower in the price for any return from molasses or pulp, is that correct?

“A. That is correct.”

The next is on page 35, line 10:

“Q. Well, was there any competition between [135] Oxnard plant of Crystal and Clarksburg plant of Crystal for growers?

“A. No.”

Then on page 36 line 3:

“Q. Who had charge of the growers sign-up at Clarksburg during 1939, '40 and '41?

“A. I was not responsible for it.

“Q. So whatever was done was done under your general supervision or by you?

“A. That is right.”

Item 11 starts at line 13 on page 36:

“Q. Were the shipments that were made to Clarksburg all made by water transportation?

“A. Oh, no. The biggest percentage of them comes in by truck.

“Q. Were any of them sent in by freight?

(Deposition of Lester J. Holmes.)

“A. No.

“Q. Now, insofar as the Mandeville Islands were consigned, did those all come in by water transportation?

“A. Those that came in to Clarksburg came by water.

“Q. Now, were there any beets grown in San Joaquin County that did not come by water during those years? “A. No.

“Q. Now, the cost of shipping to Clarksburg was [136] paid by whom?

“A. The company paid that.

“Q. The cost of freight to Oxnard of the northern California beets was paid by whom?

“A. The company.

“Q. Now, in connection with these freight and water hauling charges, were any of those charged by the company to the grower?

“A. None whatever.

“Q. In determining the net return, were any of these freight or hauling charges included?

“A. No.

“Q. Now, in connection with the sale of the sugar itself, was the freight involved in the sugar sales, if any, deducted from the gross return in determining the net return of the sugar sales?

“A. Yes.”

That completes the Holmes deposition.

The next deposition is the Hardy deposition, Myron W. Hardy. I start at page 4 line 8:

“Q. What is your name?

(Deposition of Myron W. Hardy.)

“A. Hardy.

“Q. Your first name, please?

“A. Myron W.

“Q. Where do you reside? [137]

“A. Orinda, California.

“Q. Where is that with reference to San Francisco?

“A. Well, it is—I will say it is about 15 miles northwest or northeast.

“Q. In Marin County?

“A. Contra Costa County.

“Q. What is your occupation, Mr. Hardy?

“A. Western salesman.

“Q. For whom?

“A. American Crystal Sugar Company.

“Q. How long have you been western salesman?

“A. Since 1937 or 1938, I am not sure.

“Q. During that period of time have your headquarters been located in San Francisco?

“A. Part of the time and part of the time in Los Angeles.

“Q. When was it in Los Angeles?

“A. 1939 through 1941 and the spring of 1942.

“Q. Then prior to 1939 and subsequent to the spring of 1942 your headquarters have been in San Francisco?

“A. That is right.

“Q. Now, you spoke about the western territory. What does that include?

“A. That includes the State of California, Ari-

(Deposition of Myron W. Hardy.)

zona, Oregon, Washington, Montana, Idaho and Nevada. [138]

“Q. Now, does American Crystal have any other sales territory other than the western territory?

“A. Yes. We have the eastern sales territory.

“Q. What does that include?

“A. Wherever they might offer sugar in the eastern territory. Generally speaking it would be Chicago and west of the Rocky Mountains.

“Q. Now, during the period of time that you were sales manager of the western division was there also a salesmanager of the eastern division?

“A. Yes.

“Q. Was there a salesmanager over the two divisions? “A. No.

“Q. Was there a sales head over the two divisions?

“A. The president of the company.

“Q. Then you reported directly to the president of the company, is that correct?

“A. That is correct.

“Q. During this period of time that you were head of the western sales was there a general manager of the company?

“A. Yes.

“Q. Was that Mr. Zitkowski? “A. Yes.

“Q. Did you at any time take instructions from or [139] report to him in connection with your duties? “A. No.

“Q. And you reported directly to the president, is that correct?

“A. Up to the last year.

(Deposition of Myron W. Hardy.)

“Q. That is, up to 1948, is that it?”

“A. Yes.

“Q. What time in 1948?”

“A. Well, I couldn’t tell you exactly. I am guessing at 1948.

“Q. Well, could it have been 1947?”

“A. Probably could. I don’t recall. I know it was in the last year or two years that they had a general salesmanager.

“Q. Did they have one in 1939? “A. No.

“Q. 1940? “A. No.

“Q. 1941? “A. No.

“Q. 1942? “A. No.

“Q. Now, in connection with your duties as western salesmanager did you handle the sale of sugar?”

“A. Yes. [140]

“Q. Did you handle the sale of anything else except sugar? “A. Yes.

“Q. What?”

“A. Dried beet pulp and molasses.

“Q. Was there anything else besides dried beet pulp, molasses and sugar that you handled?”

“A. No.”

Now, No. 2 started on page 10 at line 10:

“Q. During the years that you were salesmanager Crystal manufactured beets into sugar at two factories in California, isn’t that correct?”

“A. That is right.

“Q. Now, where else did they manufacture sugar in your territory?”

“A. Montana.

(Deposition of Myron W. Hardy.)

“Q. Where in Montana?

“A. Missoula, Montana.

“Q. Who gave the instructions for the shipping of sugar from Missoula, from Oxnard and from Clarksburg?

“A. Shipping where?

“Q. Anywhere from there?

“A. Well, if it was in the Pacific Coast territory I gave the instructions for the shipment.”

Now, No. 3 starts at page 17, line 9: [141]

“Q. When sales were made in the eastern territory which were filled by California produced sugar, were those sales made by you or under your direction or were they made by someone else in the company?

“A. Made by someone else in the company.

“Q. Who determined whether or not California sugar would be shipped to fill an eastern order?

“A. That would be the management in Denver.

“Q. Were you consulted in connection with sales of California sugar in the eastern market?

“A. No.

“Q. How were you informed about such sales?

“A. From the factory shipping records, daily reports.

“Q. Well, then, is it correct to state that the first time you knew that any California sugar had been sold in the eastern territory was when you received a copy from the factory of the shipping report, is that correct?

“A. That is correct.”

(Deposition of Myron W. Hardy.)

The next starts on page 25 at line 16:

“Q. Were you ever present at a discussion at which Mr. Zitkowski was present, or any other officer of American Crystal, in which the subject under [142] discussion was whether or not the price to be paid the growers should be based upon the average net return of the sales of all the factories in northern California rather than the average net return of the particular factory to whom the growers’ beets were sent for manufacturing into sugar?”

“A. No.

“Q. Were you ever present at any discussion with anyone connected with Holly Sugar or Spreckels Sugar on that subject?”

“A. No.”

The next starts at page 32.

Mr. Works: Do you mind, in order to save time reading line 3 to 11 on page 26 so we won’t spoil the continuity?

Mr. Arndt: That is part of your case but I have no objection to doing it:

“Q. Did you at any time know that commencing with the crop year 1939 and continuing through 1939, 1940 and 1941 the contract generally used by Crystal in that portion of California which shipped beets to its Clarksburg factory paid for the beets upon a formula in which one of the variables was the average net return from the sale of sugar of all of the factories in California north of the 36th parallel?”

“A. No.” [143]

(Deposition of Myron W. Hardy.)

It that the part you wanted?

Mr. Works: Yes, thank you.

Mr. Arndt: Now, on page 32, commencing at line 17:

“Q. Did you ever take any recommendations, either orally or in writing, to the Denver office or anyone connected with the American Crystal on the subject of cross-haul of sugar or avoiding cross-haul of sugar?”

“A. No.”

The Court: Mr. Arndt, how is this pertinent?

Mr. Arndt: I will explain it to your Honor.

The Court: I can't see where it has anything to do with this lawsuit.

Mr. Arndt: Our position is this, your Honor, that the purpose of having the joint arrangement was part of a plan which developed as follows:

During the year 1938 Crystal sales of sugar were mainly in the western parts of the United States and as a result they had a very small charge for freight.

The other companies sold a lot of their sugar elsewhere and had a very high charge for freight. As a result Crystal had a much better net return for the growers than the other companies so the other companies said to Crystal:

“You have got to stop this. We can't compete with you if this continues. What we have got to do is to work this along so we all pay the same and that you have got to start [144] shipping your sugar east so your freight will go up and you will have the same kind of freight that we do.”

(Deposition of Myron W. Hardy.)

That was all that I intended showing by this deposition. That is all this deposition will show, that all shipments of sugar which were made outside of the western territory was made upon orders from the president. He is the man who handled it.

The Court: May I ask this question? Is it your contention that the efficiency or the net returns to the growers were reduced by anything else other than the difference in freight?

Mr. Arndt: That item is the largest item of expense and of the deductions that we can distinctly prove from the figures. In other words, here we have the situation of—

The Court: I understand that. Just wait a minute. You answered one question and yet you haven't answered it to my satisfaction. You answer it like a lawyer generally answers a question and I am probably asking questions like a judge usually asks them, but what I am trying to get at is whether there is any other item in their operation, anything else in their operation other than the freight item that affects the grower. You can answer that yes or no.

Mr. Arndt: Yes.

The Court: All right, what are they? What are the other items? I am trying to get them fixed in my mind. [145]

Mr. Works: We can give you a break-down of that at any time.

The Court: I want to find out what the items are. You say the operations were not as efficient as they should be. That is a general term to me.

(Deposition of Myron W. Hardy.)

Mr. Arndt: This is the one item that we can specifically point to in dollars and cents and specifically show this particular freight item as showing either absolutely in efficiency during that period or an absolute agreement to make them all equal—one or the other.

The Court: Let us take the item of freight.

Mr. Arndt: Yes.

The Court: What else did it result in as far as the operation of this plant is concerned? You don't claim the operators of the plant were careless in its operation?

Mr. Arndt: The operation of the plant has nothing to do with it. [146]

The Court: The inefficiency is in the——

Mr. Arndt: The storage and the method of selling. Storage, and there is freight and there is the sales expense. Those are the items that go into it and the largest of all, the largest by far is this item of freight.

The Court: You say storage.

Mr. Arndt: Yes, storage.

The Court: Where would that enter into it?

Mr. Arndt: In other words, if they carry over from one year to the other, thousands of tons of sugar, that bears a storage charge. That storage charge is charged to the growers of one particular crop year who get no benefit at all from any increase in price resulting from holding that sugar over into the next crop year.

The Court: Is there any item outside of the freight that when you come to break it down and divide it up

(Deposition of Myron W. Hardy.)

and spread it over all their operations that justifies the time it takes to establish that item?

Mr. Arndt: I am not going to attempt to establish them, your Honor. I am going to leave them entirely to inference. I am establishing the freight situation very definitely, but I am not spending any amount of time on the other items specifically.

The Court: You may proceed.

Mr. Arndt: Item 6 is on page 33, line 3: [147]

“Q. Would you ever make a written report or write a letter or send a telegram or make any written document with reference to competition or cross-haul of sugar?

“A. No, as far as cross-haul is concerned, the subject has never come up in my time.

“Q. How about competition?

“A. Competition? Probably so.

“Q. What form did that take?

“A. I wouldn't without—I wouldn't know from memory. It might have been in letter form. It might have been in telegram, it might have been telephone.

“Q. Is it your recollection that there were any such documents?

“A. No, I couldn't recall any particular document.

“Q. Well, I didn't ask you to recall a particular document. I just asked you whether you recall that there ever was any such document?

“A. No, no.

“Q. Then your answer is that it is to the best of

(Deposition of Myron W. Hardy.)

your recollection there was never any such document?

“A. There may have been.

“Q. Oh, I see.

“A. I don't know.

“Q. Well, let me get you clear. In other words, you are now stating that you do not remember any particular [148] document, you do not remember whether there was any such document, but you will not state that there wasn't, because there might have been? “A. There might have been.

“Q. Now, is that a correct resume of your position? “A. That is right.

“Q. Okay. Now, you have made reference to the sale of beet pulp. Did you receive instructions from Denver as to such sales?

“A. As far as price was concerned, yes.

“Q. Did you have anything to do with the instructions regarding the shipment of beet pulp from Clarksburg to Oxnard?

“A. There never was any beet pulp shipped from Clarksburg to Oxnard.

“Q. Did you have anything to do with any instructions regarding the shipment of molasses from Clarksburg to Oxnard?

“A. No.

“Q. Who handled that?

“A. The operating department.

“Q. Did you have anything to do with the sale of molasses? “A. Yes.

(Deposition of Myron W. Hardy.)

“A. When you speak about the operating department, [149] what department do you mean by that?”

“A. The department headed by Zitkowski.

“Q. So that department then determined what molasses would be shipped from Clarksburg to Oxnard, and what molasses would be sold, is that correct?”

“A. No, they determined the amount that would be shipped to Oxnard for processing.

“Q. Who determined the amount that would be sold?”

“A. That would be the balance, the difference between the production and what was shipped to Oxnard.

“Q. Then as I understand it you had nothing whatsoever to do with that portion of the molasses that was shipped from Clarksburg to Oxnard?”

“A. Nothing whatever.

“Q. And you do not know whether Oxnard was charged and Clarksburg was credited with any particular amount as to that?”

“A. No.

“Q. That was a matter that was handled by Mr. Zitkowski's department, is that correct?”

“A. That is correct.”

The next is on page 37, line 10:

“Q. But, in any event, during the years 1937, 1938, 1939, 1940 and 1941 Crystal did have either a list or a selling price? [150]

“A. Undoubtedly.

“Q. And was that issued by your office or by Denver or by somebody else?”

(Deposition of Myron W. Hardy.)

“A. By the Denver office.

“Q. Insofar as these lists were concerned, when they were received by your San Francisco office, what happened to them?

“A. They were kept in the current file until—not more than a year. There may be numerous changes during a year and it would be quite a bulky affair.

“Q. What happened to them at the end of the year? “A. No.

“Q. Pardon? “A. No, I don't.

“Q. I said what happened.

“A. What happened to them?

“Q. Yes.

“A. They were destroyed, as far as we were concerned out here.

“Q. Then, as I understand it, during these particular years, 1937, 1938, 1939, 1940 and 1941 the Denver office from time to time issued the list prices at which you were to sell, is that correct?

“A. Yes.

“Q. Now, was that a maximum or a minimum price or a [151] flat price you were to sell at?

“A. Oh, that was a list price. The selling price might be entirely different.

“Q. Who gave you instructions as to changing the list price to a selling price?

“A. That was—the instructions would come from Denver.

“Q. Did you have any discretion yourself on that subject? “A. Discretion?

(Deposition of Myron W. Hardy.)

“Q. Discretion. “A. No.

“Q. So that any change from the list price came only upon specific instructions from Denver.

“A. That is correct.

“Q. And those specific instructions, I understand, came from Mr. Wilds, the president?

“A. Mr. Wilds in those years.

“Q. Pardon?

“A. Mr. Wilds during those years.

“Q. Now, referring to these documents which you say are destroyed, did they show the price for San Francisco or did they show a price for other locations other than San Francisco?

“A. Your price is the same—that is for the—your [152] list price is the same for the entire Pacific Coast territory. It would cover all the Pacific Coast. What we term Pacific Coast would include the Northwest and Arizona.

“Q. Did you ever sell sugar in Spokane for the same price as you sold sugar on the same day in San Francisco? “A. No.

“Q. Then explain what you meant by saying you had a list price which was the same for the entire Pacific Coast.

“A. That was your list. Under your basing point system or pricing, in preparing your list price you show only the price at the nearest seaboard refinery.

“Q. And then the nearest seaboard refinery during those years was San Francisco, is that correct?

“A. Yes.

(Deposition of Myron W. Hardy.)

“Q. And you so showed, then, on your list price the San Francisco price?”

“The Witness: That is right.”

The next is on page 40 at line 15:

“Q. Now, you have referred to the basing point or base point price system. Will you explain what you meant by that expression when you used it?”

“A. That is the price that the cane people establish at the refinery at seaboard, which price is arrived at by determining their delivered price on raw sugar from Cuba or wherever it might be, the point of origin, and their cost of [153] refining and they arrive at that base price at that point.

“Q. And then insofar as the United States was concerned were there three such base points, New York, New Orleans, and San Francisco?”

“A. Yes, in addition to some more.

“Q. What others were there?”

“A. Definitely I couldn't say, but I believe there was more on the eastern seaboard than you mention.

“Q. Well then, when sugar was shipped from California to the eastern seaboard was the sale based upon the eastern seaboard base price or upon the San Francisco base price?”

“A. I don't believe any sugar was shipped from California to the eastern seaboard in that period of time.

“Q. Was any sugar shipped from California to the midwest during that period of time?”

“A. I don't know.

“Q. Well, now, you spoke about some sugar be-

(Deposition of Myron W. Hardy.)

ing shipped from California into the eastern territory. What part of the eastern territory were you referring to?

“A. That would be the territory of Chicago west to the Rocky Mountains. [154]

“Q. Well, then, when sugar was shipped into that territory was the price based upon whichever had the smaller freight haul from destination to the eastern seaboard or the western seaboard?

“A. I don't know, because the pricing of sugar delivered in that territory was handled by someone else.

“Q. That was handled by whom?

“A. The Denver office, as far as I know.

“Q. So that when sales were made in the eastern territory you had nothing to do with the price whatsoever? “A. No.

“Q. Now, you have informed us that the price was fixed by Denver insofar as sales in the western territory was concerned; that is correct, is it not?

“A. Yes.

“Q. And you also have informed us that Denver issued a list price which used San Francisco as the basing point?

“A. For this territory, yes.

“Q. Did you ever have any general instructions as to what you were to add to or subtract from this San Francisco base point on sales made outside of San Francisco?

“A. Yes, if you used the base pointing system

(Deposition of Myron W. Hardy.)

you would naturally use the freight applied from San Francisco to the point of destination.

“Q. Now, isn't it a fact that in the absence of specific [155] instructions to the contrary that is the method you used in your sales during those periods of time?

“A. That would be an ideal situation.

“Q. Isn't that true as to what happened, in the absence of instructions to the contrary?

“A. That is right.

“Mr. Whyte: I want to be sure that the witness understands your question. Actually did the price of sugar at the point of sale in all cases equal the base price at San Francisco plus the freight to any destination?

“The Witness: No.

“Mr. Arndt: He has already testified that it didn't.

“The Witness: No.

“Mr. Arndt: The question I asked him was: In the absence of specific instructions to the contrary they applied the base point system; that in various cases he had specific instructions to the contrary, and when he had specific instructions to the contrary then he did not apply that system.

“The Witness: I understand the question to mean that we had a formula for selling at various destinations that we could use if there was—the price at that destination was not less than the base price plus the freight.

“Mr. Arndt: That is right.

(Deposition of Myron W. Hardy.)

“Mr. Whyte: I am just as anxious to understand this as you are. [156]

“Mr. Arndt: Q. And those were your general instructions? “A. Yes.

“Q. And then when you found out that due to competition you could not get that price, then if you wanted to make the sale, you got in touch with Denver and got authority? “A. That’s correct.

“Q. And I think you also testified that in so far as you remember that authority was usually given by telephone?

“A. Usually, yes. In cases of that kind there is an element of time enters into it. You have to use the telephone.”

The next is at page 47, beginning at line 23. This is still Myron W. Hardy.

“Q. Now, I want to be sure I understand one other matter. Did you ever receive any instructions authorizing you to sell a given amount of sugar in a given year within your territory, or did you have to get approval of every sale that was made from Denver?

“A. Well, I could answer that in this way: That I made up sales estimates, which I submitted for a full crop year to Denver for their approval, and if they wanted to change it they had the privilege of doing so.

“Q. How often was that done?

“A. I do it every month. [157]

“Q. What are these documents called?

“A. Estimated sales.

(Deposition of Myron W. Hardy.)

“Q. Would Denver either specifically approve it, or did they tacitly approve it by not objecting to it, or would they object? What was the mechanism?

“A. For instance, we were going to sell, we will say, one million bags of sugar in a period of a crop year from both Oxnard and Clarksburg in California and the Pacific Northwest. They may say: No, you are not going to sell all of that. We are going to take some of that, probably into Arizona. We might take some into Nebraska, so we will cut your estimate down by the amount that they desired to.

“Q. The figure to which they cut it down, you had authority to sell that amount anywhere in your territory?

“A. Yes, not all at once. I have the authority to sell, I will sell, in an orderly manner over a period of months, so much each month.

“Q. I thought you filed it for each month.

“A. I do. I file it for each month showing the estimate sales for this—we will say for the month of August—

“Q. Yes.

“A. —then the estimated sales from September through July next year.

“Q. In other words, then, you do show all of that on the same report? [158]

“A. Yes.

“Q. And then if no objection was raised, then that was your authority to sell that amount of sugar in the orderly manner?

“A. Yes.

“Q. And if you could sell it at the base point system plus freight, you needed no further authority.

(Deposition of Myron W. Hardy.)

“A. If I could get more than that for it, why, that was fine with them.

“Q. But if you wanted to sell under it you had to get specific authority? “A. That is right.”

That completes the testimony of that deposition.

The Court: Now, I am going to ask you, after reading that, what have you established by it, in your opinion?

Mr. Arndt: I have established by that that Denver handled all sales made of Clarksburg or Oxnard sugar outside of the western area, and that when sales were made from this area that were for delivery to these places where the freight was expensive, it was done upon orders from Denver. We tie that in with the figures that we will produce showing what happened as soon as this went into effect, this conspiracy went into effect; that during the years 1938, 1939 and 1940, Crystal's own individual cost of freight jumped a way up, and as soon as the conspiracy was over, it jumped down again, [159] not only in dollars and cents but in percentages.

The Court: You read an awful lot of deposition to establish that one item you are driving at, Mr. Arndt. I don't know whether I can hold out or not. I think you are reading a lot there that doesn't tend to establish anything one way or the other. You say you established there that the sales outside of this particular area were controlled by Denver.

Mr. Arndt: No, that any sugar sold for delivery outside of this area, from this area, was controlled by Denver, and that sales were made on the San Fran-

cisco base point, which meant that as you went further from San Francisco, there was more and more freight, you paid more and more freight.

The Court: I am getting what you are driving at, but we have to take such a long trip to get there.

Mr. Arndt: I know we do, your Honor. That is one of the unfortunate things when we are dealing with a situation where no one knows anything they did and everybody denies having any knowledge of what happened or why it was done. We have this letter, in which they say—

The Court: But you read a lot of questions and answers which you introduce without reading all of the depositions, and I am sure that if you went over it again, you would eliminate half the questions that you did read.

Mr. Arndt: That is possible. I don't know when your Honor wants to stop. [160]

The Court: I think I am going to quit now. How many more depositions have you?

Mr. Arndt: The rest of the depositions are very brief. There are six depositions, but altogether they will not take as much time as the Zitkowski deposition took, because for the most part they said they did not know anything about it.

The Court: Why don't you get down to that and read that and have it over with? I have to finish this case this week, gentlemen, as far as the taking of evidence and the reading into the record is concerned, because I have other commitments. The only reason you got all this week is the fact that a case for Thursday and Friday blew up, as we say here.

Mr. Arndt: I will do my best, your Honor.

The Court: I think there should be some shorter method to get that, because I am going to have to do so much reading when it is all in, anyhow. I don't know whether the defendant intends to introduce the balance of the depositions or not.

Mr. Works: Well, your Honor, I heard your remark earlier. It seems to me most of this material clutters up the record, but if your Honor would like to have them all——

The Court: No. I am not asking for them.

Mr. Arndt: I think I will save considerable time by [161] picking out extracts, rather than reading them all in.

Mr. Works: That is the theory on which I have been operating.

The Court: You intend to go through the depositions again and read parts of them?

Mr. Works: We have taken no depositions.

The Court: I mean parts of the same ones.

Mr. Works: I don't think so.

The Court: The only thing is, I have been listening here all afternoon. I have tried to be patient about it. Somebody my impatience becomes apparent. But in listening to the questions and answers, you still haven't got down to the meat. In other words, we spent quite a bit of time on this last deposition, and I think that with a half dozen questions you could have stipulated to what he testified to. As to the others, I don't know, but I think you could stipulate on the testimony.

I think perhaps I will ask counsel what he expects

to prove by that deposition to see whether we can stipulate.

Mr. Arndt: I have furnished them with a list, so I am not taking them by surprise.

Mr. Works: No, I don't say we are taken by surprise.

The Court: I am not saying you are, either. I presume you wouldn't dispute this man testified he had his orders from Denver and he was working under them. [162]

Mr. Works: There is no mystery about it. Mr. Arndt was very diligent in asking for stipulations and we would have stipulated to these things, as well as a lot of other things we agreed to.

The Court: Well, we will take an adjournment until Thursday morning at 10:00 o'clock.

(Thereupon, an adjournment was taken until 10:00 o'clock a. m., Thursday, February 23, 1950.)

Los Angeles, California,
Thursday, February 23, 1950, 10 A.M.

Mr. Arndt: If the court please, at our last session a question came up regarding the method of handling the particular interrogatories and answers the plaintiff desires to use. At that time the understanding and order was that I would have them copied and then present them.

Since that time, I feel that we would have a more uniform method if the reporter did that, and I have collected together all of the interrogatories followed by the respective answers cut out directly from the interrogatories and from the answers, and I would

like to have the order changed so that the reporter can have them copied, so we will have a uniform situation instead of having something that my office would prepare which might not at all agree with the way the reporter is doing it.

The Court: Whichever is satisfactory to counsel.

Mr. Works: That is quite all right, counsel.

The Court: It is very difficult, and I think you gentlemen appreciate it more when you come to read it that when you are working with a transcript and working with interrogatories and in another document find the answers, and you have to check back and forth, it makes it a very difficult task.

Mr. Works: It is much better this way, I think. [165]

Mr. Arndt: So I will present them, then, to the reporter.

The Court: That will be substituted for the questions and answers that you offered the other day—not as a substitute, but as an addition to and explanatory of the particular interrogatories that you put in the other day.

Mr. Arndt: That is correct, your Honor.

The Court: You don't expect the reporter to get that out for you today, do you?

Mr. Arndt: No, your Honor, because Mr. Works and I are going to have some additional stipulations, which probably won't be ready until next week or the week after, because he is getting certain data that I am stipulating to, and I am getting certain data that he is stipulating to, so in view of the fact we are

going to have briefs, we won't delay anything by that method.

I next offer, if the court please, certain portions of the deposition of Edgar E. Merrill. The first appears at page 2 of the deposition.

“Q. What is your name, please?”

“A. Edgar E. Merrill.

“Q. Where do you reside?”

“A. In Denver, Colorado.

“Q. What is your connection with American Crystal Sugar Company? [166]

“A. At present I am the auditor.”

The next is starting toward the bottom of page 3.

“Q. Are you familiar with the various books of account and records of American Crystal Sugar Company? “A. Yes.

“Q. Are they under your general supervision at the present time? “A. That is right.

“Q. When you answered you were referring to accounting records? “A. That is right.

“Q. In front of you is volume entitled ‘American Crystal Sugar Company, Analysis Ledger of Control Account, Fiscal Year ending March 31, 1942’. Is that a book of original entry?”

“A. I would say it is. It is the ledger to which the analysis by factories of all journal entries is posted, concurrently with the posting to the control accounts in the general ledger.

“Q. As I understand the situation, there are certain journal entries made, and then these journal entries are combined for each factory and the combined figures, then, are, at certain intervals posted from the

(Deposition of Edgar E. Merrill.)

journal into this ledger? "A. That is right.

"Q. I notice this ledger is divided into various accounts. [167] Do these accounts show for Oxnard and Clarksburg the various amounts shown on these journals that you have spoken about?

"A. That is true, they do. [168]

"Q. How do the entries get into the journal?

"A. From the various sources, such as sugar invoices, sugar sales registers; in the case of the account you have before you, the excise tax on sugar sold. These journals charge this account and credit the liability account which is set up at the time sugar is manufactured.

"Q. When you said 'these journals' you were referring to an item under the heading 'source,' is that correct?

"A. Yes; those are the journal entry numbers.

"Q. Where 'source' appears, the figures under that are the journal entry numbers.

"A. That is right.

"Q. Now, this first account, which is worded, 'excise tax on sugar sold', does that show the excise tax on sugar sold from Oxnard and Clarksburg, as the case may be, during the various months that are herein set forth? "A. Yes.

"Q. I call your attention to the fact that from time to time certain penciled notations appear. Do those penciled notations show the addition of the figures that went before?

"A. Yes. Those are the accumulated footings for [169] the fiscal year.

(Deposition of Edgar E. Merrill.)

“Q. So that if, as of the end of July, we wanted to ascertain the totals for a given account in this book, we would take the penciled notations that follow the July entry and precede the August entry.

“A. That is correct.

“Q. So that, for example, this first account of excise tax on sugar sold, where the penciled entry of \$175,217.32 appears under Oxnard, that would represent as of the end of July the totals of excise tax paid on sugar sold from Oxnard.

“A. For that fiscal year.

“Q. For that fiscal year?

“A. And to that date.

“Q. And that would apply through the ledger?

“A. Yes.

“Q. Is this same system carried on uniformly throughout this ledger?

“A. Yes. The footings accumulate the totals from the beginning of the fiscal year to date, for each month throughout the year.”

The next is on page 19.

“Q. Now, this next heading is called ‘Pulp Sales,’ and the first one is the account, ‘Wet Pulp,’ [170] and there is no number, but it says, ‘Sales’ and this is only for Clarksburg. Does that represent the sale of wet pulp from Clarksburg during the period covered by this ledger? “A. Yes, it does.

“Q. Now, were these sales reflected in any way in the computation made under the growers’ contracts in the years from 1939 to 1942?

“A. I would say no, with the same qualification I

(Deposition of Edgar E. Merrill.)

made before, that these details I was not handling at that time.”

Mr. Works: May I request a stipulation at this point?

Mr. Arndt: Yes.

Mr. Works: The same items were not reflected in the computation made under the growers' contracts in the years 1937 or 1938 either.

The Court: I understood from a statement made the other day that in the computation of the contracts that are not in dispute that practically the same practice was followed.

Mr. Arndt: That is true.

Mr. Works: I merely wanted to clarify that and counsel has so stipulated.

Mr. Arndt: I do now at any rate.

“Q. The next general heading is ‘Pulp Sales Expense.’ It says 870 to 872, inclusive. Now, referring to [171] Clarksburg, does this refer only to wet pulp?

“A. Yes, it refers only to the expense incurred in the sale of wet pulp.

“Q. Then, these show all the expenses that were incurred in that sale, is that correct?

“A. Yes.

“Q. Now, the next account is headed ‘Molasses Sales.’ Does that represent the sale of molasses from Oxnard and Clarksburg, as shown for those respective factories during this particular year?

“A. Yes.

“Q. Were these sales reflected in the computation

(Deposition of Edgar E. Merrill.)

made in connection with the payments to growers under the 1939, 1940 and 1941 contracts?

“A. With the same qualifications that I made in answering on wet pulp and dried pulp, I would say they were not.”

Mr. Works: May I have the same stipulation as to this testimony?

Mr. Arndt: Yes.

The Court: I thought it was stipulated to the other day.

Mr. Works: I didn't know how far it went.

The Court: I understood quite clearly that the principal change in their method of doing business was the [172] increase in freight by reason of these contracts. In other words, the item that you can put your finger on represents the excess freight over the previous contracts and subsequent contracts.

Mr. Arndt: As to the matter of expense, yes. There is another matter we will show and that is during these three years the shipments from Clarksburg to Oxnard greatly increased, but that is not a direct item of expense. That is an item on which we will make certain arguments. In other words, during this three-year period that affected the overhead, your Honor.

The Court: Of course, every time the grower got less money——

Mr. Arndt: So far as the shipments from Clarksburg to Oxnard were concerned that didn't work that way. When they shipped from Clarksburg to Oxnard, and let us say they shipped 15 per cent, which

(Deposition of Edgar E. Merrill.)

is the actual figure for some of these years, 15 per cent of the beets from Clarksburg to Oxnard, now in making the settlement to the grower they made the settlement to the grower based on the amount of beets he produced and that reflected the amount of sugar sold from Clarksburg.

Now, if 15 per cent of the beets, and presumably 15 per cent of the sugar was included in the Oxnard figures, the growers were being charged with an extra 15 per cent of [173] overhead that they would not have been charged if those beets had been processed in Clarksburg. And as to those beets that went to Clarksburg these growers had no benefit at all but the Crystal Company got the entire benefit.

Mr. Works: We will show that is absolutely incorrect.

The Court: Your point is this and correct me if I misunderstand, by the shipment of beets to Oxnard unless the Clarksburg plant was working at full efficiency their overhead would be increased by reason of not processing the beets at that point.

Mr. Arndt: That is right, their unit overhead.

Mr. Works: The overhead was not charged against the growers. We will show that these contracts carry their own method of figuring the net.

The Court: But I am trying to get Mr. Arndt's point of view.

Mr. Arndt: Now, for example, there were certain sales expenses. Those sales expenses included the expenses of the salary of this witness and various other expenses, office expense and so on.

(Deposition of Edgar E. Merrill.)

Now, if those expenses were charged only to the sugar that was produced from Clarksburg and wasn't charged to any sugar that was shipped—any of the sugar produced from our beets that were shipped south then our unit overhead naturally increased.

We will show that during the three years the amount of sugar practically doubled that was shipped from—pardon me, the amount of beets and as soon as it was over, as soon as the conspiracy was over it dropped again.

The Court: I presume your point is only well taken if it is true that the overhead was charged to the growers—that is the general overhead was charged as an item of expense to the growers. Also if that practice reduced the efficiency of the plant and it was not running at a reasonable capacity. If that were true there would be something to your point. That is your theory, is it not? I don't know whether I have stated it clearly.

Mr. Arndt: Yes, your Honor, and the fact that every pound of beets that was shipped to Oxnard and the sales thereof included in the Oxnard sales and not in our sales gave us a different fraction to work with, and when it amounts to 15 per cent it would make a substantial difference in the amount of money we would have received. [175]

The Court: Well, that also goes to the question of whether or not there was a surplus of beets in Clarksburg and whether they were in a position to handle all the beets that were produced there, doesn't it?

Mr. Arndt: That is correct.

(Deposition of Edgar E. Merrill.)

Mr. Works: And, your Honor, there is also this element. Those beets were bought and paid for f.o.b. Clarksburg. After they were bought, they were ours.

Mr. Arndt: Well, now——

Mr. Works: That question is implicit in the whole situation.

Mr. Arndt: Since counsel makes that statement, suppose they had shipped every beet except 100 pounds to Oxnard?

The Court: I get your point.

Mr. Arndt: According to him, they could have done it and we would have got nothing. All the overhead would have been charged against the 100 pounds, and yet Mr. Works says that is perfectly all right, that they are their beets.

Mr. Works: Even a hundred pounds would have set a measure whereby he would have been paid for his whole beet crop. Obviously, the situation he suggests is ridiculous, but he would have been paid for his entire crop, no matter where we shipped it.

Mr. Arndt: And against it would have been charged the San Francisco sales office and all [176] that.

The Court: Let's proceed, gentlemen. I follow you, I think.

Mr. Works: As to that question, I would like a stipulation from you, Mr. Arndt, that beets were shipped from Clarksburg to Oxnard in 1937, 1938 and 1942, and your client knew it all the time.

The Court: You mean before this three years?

Mr. Works: Yes, blanketing the three years.

(Deposition of Edgar E. Merrill.)

Mr. Arndt: I have the figures for 1938, and, I think, if you will furnish me the exact figures and tell me they are correct, I will stipulate. As to what my client knew, I will discuss that with him and we will stipulate as to what he tells me. He is here. He will be on the stand and you can ask him that question yourself, as far as that is concerned. As to the figures for 1937, 1938——

The Court: Let's proceed, gentlemen. I want to see some live witnesses.

Mr. Arndt: You see, your Honor, we are in the situation, as in most antitrust cases, where the evidence as to what happened is all in the defendant's hands. We have to produce from their own unwilling lips and from their own records as best we can what the situation is and draw inferences therefrom. Then it is up to them to explain various things that happened.

The Court: Let's proceed with this man's [177] testimony.

Mr. Arndt: All right. The next is a change in what is set forth in our schedule. This is at page 25 at the bottom.

"Q. Did you, yourself, at any time during 1937, 1938, 1939, 1940, 1941 or 1942, have any conversations with anyone connected with either Holly or Spreckels regarding change or proposed change of the form of contract to be used or used in the Clarksburg District for the purchase of beets by Crystal?

"A. No."

Mr. Works: What page is that, please?

(Deposition of Edgar E. Merrill.)

The Court: That is page 25.

Mr. Arndt: That is 25.

Mr. Works: Thank you.

Mr. Arndt (Continuing):

“Q. Did you yourself ever see any correspondence, documents, or telegrams referring to any such subject?

“Mr. Works: The subject being a change in the form of growers’ contract?

“Mr. Arndt: That is right.

“A. Only those papers that I have seen incidentally. I don’t recall the particulars of them. In other words, I have never had access to and read the papers that have been furnished in answer to the interrogatories.

“Q. And outside of what those papers might disclose, you yourself have no knowledge of any other documents? [178] “A. That is correct.”

That completes Mr. Merrill.

The next is Mr. Graham. I will state, your Honor, that the Graham, Wilds, Kraybill, Summerton and Hayden depositions are all bound together and the numbers start from the first.

The Court: Let me ask you this. In the auditor’s testimony, where does that add to anything here that hasn’t been virtually admitted? Where has it added anything to what we have already established?

Mr. Arndt: He has identified certain documents which will either go into evidence directly or we will have a stipulation as to what they show, except for the last part of his testimony.

The Court: He just denied knowing anything about the transaction.

Mr. Arndt: That is right.

The Court: That hasn't proven anything, has it?

Mr. Arndt: I think that these denials do prove something. They prove the utter unreliability of the witnesses of Crystal, because they all deny, every officer denies having any conversation or knowing anything about it. Somebody must have done it.

The Court: Counsel, let's get this straight. I realize that you are an advocate in this, the same as Mr. Works. Both of you have been living with this case, and particularly [179] you have been living with it, so long that you can't see anything right in anybody else but your side of the case, and you feel that everybody who testifies that doesn't testify the way you think is not to be relied upon. They have come into court and recognized that they had a meeting and agreed on this contract.

But the thing you haven't developed is why they made the change. At least, it hasn't been brought to my attention. You are going on the theory that during this three-year period that they changed their method whereby the grower received less money for his beets than he would have otherwise received. That is the main point that I am interested in, outside of the question of law. I want to get at these figures, and I mean actual figures.

Mr. Arndt: Your Honor, I can do no more than to take the deposition of every officer, and when every officer tells me, "I was not present, I know nothing about it," I think that we have——

The Court: Well, you had one or two witnesses here that testified they were present when they discussed this change of contract.

Mr. Works: That is correct.

The Court: This method of contract. It is true that you may not be able to develop the motive behind this change. It is also true that they abandoned it. I don't know why. [180]

Mr. Arndt: If the court please, let me review the testimony so far.

The Court: Let's not review that.

Mr. Arndt: Mr. Zitkowski testified that the sales department was the one who determined this, that he received this information from Mr. Wilds; that he had written this letter to Mr. Holmes marked "Confidential," which says the purpose of this is to prevent cutthroat competition, to prevent cross-haul of sugar, which benefits the transportation companies.

Mr. Zitkowski testified all of that applied to sugar and not to the beets themselves. None of this affected the growers. He testified that all that information came to him from Mr. Wilds, and that he knew nothing about those facts, because he was only in the production department, and that came to him before he told the growers what the new deal was going to be. It was all decided before that.

So then I will follow with Mr. Wilds, and he will say he had no conversation with anybody. Mr. Zitkowski has admitted no conversation with anybody.

The Court: Which am I going to believe and which am I not going to believe? How am I going to

pick out who is telling the truth? The parties are not before me.

Mr. Arndt: Your Honor, I can't bring them here.

The Court: I realize that. You started out [181] on one track, and you stay on that track, and I have been trying to get you switched off it, because I want to get down to the point of the element of damages.

Mr. Arndt: I know your Honor does. If Mr. Works would admit that there was a conspiracy and restraint of trade and that the sole matter was damages, we could do that, but he won't admit it.

The Court: I recognize that, but you have a Supreme Court decision. You have got your contract, and it is apparent that that was an agreement between the growers of that area. The fact is that it was also in the southern part of the state. They had that agreement. Now, if the Supreme Court decision can be interpreted, as I think it can be interpreted, that there was an unlawful agreement, what more do you want? You have got the law of the case. The Supreme Court has already held that. Now, if they stay with it or not, that is another problem.

Mr. Arndt: Mr. Works holds that is not what the decision holds, and from an abundance of caution, I am endeavoring to complete a case that will meet any objection of Mr. Works, as well as your and my interpretation of the decision.

Mr. Works: I think his Honor is trying to indicate to you as clearly as the English language will permit, that he is ready to find on both of those issues right now.

Mr. Arndt: I have no doubt about that, but, [182]

nevertheless, I want to present this record so that when Mr. Works starts taking a few shots at it, I will have it properly buttressed.

The Court: Why don't you introduce the whole deposition and have it over with then?

Mr. Arndt: As a matter of fact, there are very few matters left here.

The Court: The point is this, that you haven't yet answered Mr. Works' point, and that is that he claims the Supreme Court was dealing with sugar when, as a matter of fact, you are dealing with beets. Am I not correct in that?

Mr. Works: That is what the opinion says.

Mr. Arndt: That is not what the opinion says.

The Court: I know, but you are spending your time on sugar, when the commodity involved in this litigation is beets.

Mr. Works: That is right.

The Court: And the Supreme Court, they didn't say it, but in effect they held that when you dealt with beets, you were dealing with sugar.

Mr. Arndt: That is right.

The Court: And if that is true and that is what they meant by it, all the rest of this is a waste of effort.

Mr. Arndt: I must ask the court to be patient.

The Court: However, it is easier to listen to you than to have you go ahead and argue, so go ahead. You said it [183] wouldn't take you long to finish that feature of it.

Mr. Arndt: This is the deposition of Robert H. Graham.

(Deposition of Robert H. Graham.)

“Q. What is your name, please?

“A. Robert H. Graham.

“Q. You reside in Denver?

“A. Yes.

“Q. What has been your connection with American Crystal Sugar Company, to which I will hereafter refer to as Crystal?

“A. Well, the whole experience has been in the accounting department, starting in, of course, as clerk, then bookkeeper, assistant auditor, auditor, and now, manager of the tax department.”

The next is at page 37.

“Q. Now, Mr. Graham, did you ever have any conversation with anyone connected with Holly Sugar Corporation or Spreckels regarding contract or contracts or form thereof used or to be used between Crystal and the growers of sugar beets in California for the cropping years of 1939, 1940 and 1941?

“A. No.

“Q. Did you have any conversation with any person connected with either of those two companies regarding the change in the form of the contract used by Crystal for its Clarksburg operations from the form used in 1938 to the form used in the cropping year 1939? [184]

“A. No.

“Q. Did you ever have any discussion with any such persons regarding the reason for such change?

“A. No.

“Q. Did you ever have any discussion with any of such persons regarding the cross-haul of sugar produced at Clarksburg and Oxnard factories and

(Deposition of Robert H. Graham.)

sold between 1938 and 1943? "A. No.

"Q. Did you ever have any conversation with any such persons regarding competition or lack of competition or elimination of competition in connection with the sale of sugar? "A. No.

"Q. Were you ever present at any conversation at which any of those matters were discussed, whether that conversation was with persons connected with those companies or connected with Crystal, and I am referring to conversations occurring between 1938 and 1943, inclusive?

"A. No.

"Q. During those particular years from 1938 to 1943, inclusive, did you see any correspondence between Crystal and either of those two companies on any of those subjects? "A. No.

"Q. Are you acquainted with the location of the Colorado sugar factories of Crystal? [185]

"A. Yes.

"Q. Are you familiar with the location of their factories during the cropping years 1938 to 1943, inclusive? "A. Yes.

"Q. And where were they located in Colorado?

"A. Rocky Ford, Colorado.

"Q. Is that the only one?

"A. That is the only one.

"Q. Did they have any in the San Luis Valley District? "A. No factory there, no.

"Q. In other words, beets that were produced there and handled by Crystal were sent to the Rocky Ford factory, is that right?

(Deposition of Robert H. Graham.)

“A. Yes, that is right.

“Q. Is the Rocky Ford factory located in the Arkansas Valley? “A. Yes.

“Q. Is it located on the line of the Atchison, Topeka and Santa Fe Railway? “A. Yes.

“Q. Were there any other factories operated by any other company— “A. Yes.

“Mr. Works: Where? [186]

“Q. Just let me finish the sentence. Were there any other factories operated by any other company in the Arkansas Valley in Colorado on the line of the Atchison, Topeka and Santa Fe Railway, during those years? “A. Yes.

“Q. And where were they located and who operated them?

“A. Swink, Colorado, operated by Holly Sugar Corporation.

“Q. Was that the only one?

“A. That is the only one on the Santa Fe Railroad.

“Q. How far was that from the Rocky Ford factory?

“A. I would say, five or six miles.

“Q. Were there other factories in the Arkansas Valley which are not located on the Santa Fe Railroad? “A. Yes.

“Q. Where were they and who operated them during those years?

“A. A factory located at Sugar City, Colorado, owned by the National Sugar Company.

“Q. Was that the only one?

(Deposition of Robert H. Graham.)

“A. That was the only one.

“Q. And how far was that located from the Rocky Ford factory? “A. 20 miles.” [187]

I will say, parenthetically, if the court please, the reason for the reference to the Santa Fe Railway is because the contract of Crystal refers to factories in the Arkansas Valley on the Santa Fe Railway. That is why the questions were asked regarding the Santa Fe Railway.

The next on page 46.

“Q. Now, with reference to the sugar that was produced from molasses by the Steffens process at the Oxnard plant, was that sugar accounted for in the books in a different way than the sugar which was produced directly from beets in the Oxnard plant? “A. No.

“Q. In other words, the sugar sales from the Oxnard plant reflected all sugar, whether it was manufactured by the Steffens process or any other process? “A. Yes.

“Q. And whether it came from sugar beets directly or came from molasses?

“A. That is right.”

Then on page 58. Well, I won't need to read that in, because that is covered by a stipulation.

The next is the deposition of Mr. Wilds.

Mr. Works: Your Honor, may we waive the deposition of Mr. Wilds for the reason that we intend to offer the whole thing in and it can be copied in the record and your Honor can [188] read it at your leisure.

The Court: Why don't you let him offer it in evidence and you offer your part, and it will be deemed read and then have it copied for the record?

Mr. Arndt: There is one matter there, your Honor, in which Mr. Wilds made a statement which we objected to as not being responsive in the deposition itself.

Mr. Works: That gives the information which your Honor wanted, the reason why this was done, as Mr. Wilds saw it. If you want to strike it out, it is all right with me. That is the evidence I was going to offer.

The Court: We are trying this without a jury. Let's get the facts in here, the whole picture. He will offer it.

Mr. Arndt: You see, I didn't cross examine Mr. Wilds regarding that particular statement. All right. I have no objection to it.

Mr. Works: His Honor can rule on your motion to strike it.

Mr. Arndt: We will waive the motion to strike.

The Court: When you come to the question of striking a piece of evidence, after all, out of all this I hope there will be a definite picture developed and that certain facts will appear, and from that, then, you can argue the inferences to be drawn. You have the testimony of these officers, and you have undoubtedly got records here as to the freight items [189] and the breakdown.

Mr. Arndt: I am going to show that.

The Court: I want to say that is one of the items that impressed me in the statement of counsel.

Mr. Works: We will give you all the figures on it.

The Court: The inference has been here, and it has been argued, that this change in arrangements was not brought about by reason of the desire of Crystal, but by reason of pressure from his competitors. That was the inference drawn the other day. As a result, Crystal lost by it, and the growers lost by it, because this additional freight you are talking about would be, not on a 50-50 basis, they called it that, that half of the freight would have to be carried by the grower and half by the processor, but that his client in effect, that is your client, was a victim of competition, pressure by competitors, in order to obtain a uniform practice, and that his clients suffered and you also suffered, but instead of you taking 50 per cent of the loss, you took 100 per cent. [190]

Mr. Arndt: That is right.

The Court: And then multiply by three.

Mr. Works: We expect to show, your Honor, since this subject came up, in 1939 and 1940, they had the greatest beet crops they have ever had in California, and the output was very nearly double what it had been before, so that there was such a surplus it had to be exported some place. However, that is a matter of evidence. I am giving something from which other inferences may be drawn now.

The Court: I am not making any conclusion, but I am going along and making comments so that you gentlemen will know a little bit of what I am thinking about, so you will know whether or not I am

getting the theories upon which you are introducing the evidence. .

Mr. Arndt: That is right.

Mr. Works: I can't help observing this, your Honor. We have been trying a so-called beet conspiracy case, that is, we have been having a beet conspiracy case for about four or five years now, and the day before yesterday, for the first time, we are charged with combining to abandon the California market in sugar. I don't know of anything in the pleadings on that issue, but we are not being technical about it and we will meet the issue. I would like to say right now, however, I regard this present theory of Mr. Arndt's as embodying a new and distinct cause of action, which has never [191] been alleged before. We pleaded the statute of limitations in the Sugarman case. We haven't in the Evans case, and I now ask leave to plead under 343 to any concerted conspiracy with regard to abandoning the California market.

The Court: I think the general charge covers pretty near everything, counsel. I have been talking all the time here and asking questions upon what theory and how we are going to arrive at damages, and this is the first time, when we got into this trial, that I knew that this was one of his theories. As I understand it, he has two or three theories, so that the court may reach out and grab a figure and it can be supported by evidence from any one of two or three theories.

Mr. Arndt: That is correct.

The Court: That is what he is doing.

Mr. Works: I would say four or five, according to my count, and there may be more.

Mr. Arndt: There may be more yet, too.

The Court: I don't know. They have what they paid before the first contract, what they paid after, and what they paid at Oxnard. Now, to my way of thinking, if he can establish this theory he is working on by substantial evidence, that is the most logical one to me.

Mr. Works: Well, that would mean taking the 1939, 1940 and 1941 computations and possibly adjusting the freight item. [192] That is where he is going, as I see it.

The Court: Whatever it may be, I don't know.

Mr. Works: Not that we agree with it.

The Court: I understand that, but if there is a change of method in the disposal of those beets during the particular period that this three-year contract was in existence over the method they had followed prior to that time and after that time, then it would look like there is something there to tie in to.

Mr. Works: And your Honor would want to know how come, and we shall do our best to show it.

Mr. Arndt: Insofar as this Wilds situation is concerned, in order to determine which we are presenting and which they are presenting—

The Court: Just read off the part you are going to offer, and to save time, permit him to introduce the balance.

Mr. Arndt: That is all right.

Mr. Works: That is fine. Then there may be one or two objections we have in there and I waive them.

(Deposition of W. N. Wilds.)

Mr. Arndt: Starting in at the commencement of the Wilds deposition, I will read the first portion that I am offering and then I will stop and then Mr. Works can go ahead, and then I will start in.

The Court: No. I think you should just call attention to the questions and answers you have indicated on your [193] paper that you are going to offer, and then he will offer the balance.

Mr. Works: That is right. I won't bother reading it.

Mr. Arndt: All right.

The Court: How long is it?

Mr. Arndt: The whole deposition of Mr. Wilds starts from page 67 and goes to page 94. That is the entire deposition.

Mr. Works: That would be 27.

Mr. Arndt: No, 28 pages, counting the first and last. [194]

Mr. Arndt: Then I won't read our portion, your Honor.

The Court: You can do as you please.

Mr. Arndt: Whichever way your Honor wants me to do it.

The Court: I don't care which way you do it. If you want to emphasize your point I would like to get your theory.

Mr. Arndt: Starting with the first question:

"Q. What is your name, please?

"A. W. N. Wilds.

"Q. Are you president of American Crystal Sugar Company? "A. That is correct.

(Deposition of W. N. Wilds.)

“Q. How long have you been president?

“A. The former president passed away the early part of October, 1933, and I carried on in the capacity of vice president until March, 1934, when I was elected president.

“Now, I assume you are familiar in general with the contract used by American Crystal Sugar Company in purchasing sugar beets for its Rocky Ford factory in Colorado? “A. Yes.

“Q. And I assume you are familiar with the provision of it that in 1938, 1939, 1940 and 1941 provided that the price per ton of the beets shall be determined on the average sugar content of the beets delivered under this contract and the average net return, as hereinafter defined, received for sugar sold by the factories located in the Arkansas Valley in Colorado, on the line of the Atchison, Topeka & Santa Fe [195] Railroad. How long had that form of contract been used at the Rocky Ford factory?

“A. Well, I can't answer that definitely, but for a number of years, I would say.

“Q. Now, referring to the year 1938, in the factories for which Crystal purchased beets other than California and other than Colorado, did Crystal use a form of contract in which the growers were paid upon a method in which the payment depended in part upon the return from more than one factory?

“A. Yes.

“Q. And where did that occur?

“A. Mason City, Iowa, in the northern part of the state, and Chaska, Minnesota, which is in the

(Deposition of W. N. Wilds.)

southern part of Minnesota. Those two plants drew beets partially from adjoining territories.

“Mr. Works: May I clarify that? You are referring to factories operated by the same company?”

“The Witness: The same company, yes.”

“Q. In those two instances was the rate determined in part by a factory owned by any other company? “A. No.

“Q. And in any of the other factories operated by Crystal other than Colorado or California was the joint return method used? [196] “A. No.

“Q. Now, in reference to the Colorado situation, what other sugar beet company was included as having a factory in the Arkansas Valley in Colorado on the line of the Atchison, Topeka & Santa Fe Railroad?”

“A. The Holly Sugar Corporation.”

Then on page 70:

“Q. Did you have any conversation with anyone connected with Holly Sugar Corporation or Sprecckels Sugar Company regarding the change in the form of contract used in the Clarksburg factory area from the 1938 method to the 1939 method?”

“A. Mr. Zitkowski was in charge of our agriculture—

“Mr. Works: The question is, whether you talked to anybody.

“The Witness: Oh, no, I don’t remember talking to a soul. I wouldn’t have had anything to do with it because he is the one that figured out the details.

(Deposition of W. N. Wilds.)

“Q. Then, insofar as Crystal was concerned, the decision to change from the 1938 form to the 1939 form in California was made by Mr. Zitkowski?

“A. No. He presented the facts to me, and I was the one that made the final decision.

“Q. When did he present the facts to you? [197]

“A. Just before the contract was issued. I can't remember the date.

“Q. Now, the minutes of the board of directors show that on October 3rd, 1938, the 1939 contracts for Oxnard and Clarksburg were approved.

“A. If that is what is shown in the minutes that is correct.

“Q. How long before that date did you have your first discussion on the subject with Mr. Zitkowski?

“A. Before we presented it to the board. Here is the plan: Mr. Zitkowski and his assistants worked out the details of these proposed contracts. They brought them to me and I made certain tests for my own personal information to see whether or not, under the scale contract proposed and the estimated amounts that we might receive from sugar, we could make a profit. If those short individual tests showed that we could not make a profit, then he had to do some more calculating.

“Q. I am particularly referring to the change from the 1938 to the 1939, in respect to the fact that the 1938 contract for Clarksburg provided the growers were to be paid upon the basis of the net returns from Clarksburg alone, while the 1939 contract provided that the growers who dealt with Crystal in

(Deposition of W. N. Wilds.)

the Clarksburg district, were to be paid upon the [198] joint net average return of all factories north of the 36th parallel in California. Now, it is that particular change that I am inquiring about.

“A. May I elaborate a little on that in giving you a reply?”

“Q. I want to know whether you talked about that to anyone connected with Holly or Spreckels?”

“A. No, no, I did not. I did not.”

The Court: These are all adverse witnesses, are they not?

Mr. Arndt: All of them, your Honor, every one is a witness for the other side.

The Court: Then you wouldn't be bound by any of their testimony, would you?

Mr. Arndt: That is correct, your Honor.

The Court: Then why don't you introduce that in evidence as the testimony of an adverse witness?

Mr. Arndt: I would rather Mr. Works put it in as his own witness.

The Court: All right, proceed.

Mr. Works: Are you through with Mr. Wilds now? Would it be out of order for me to offer the entire deposition including the parts Mr. Arndt just read?

The Court: Will it be printed in the record?

Mr. Works: That is what I had in mind, copying the [199] Wild deposition into the record as part of our case and he can have what he wants.

Mr. Arndt: There is no objection to that.

The Court: That will be the order and the entire

deposition will be deemed as read and copied into the record by the reporter.

(The deposition referred to is in words and figures as follows, to-wit:

“W. N. WILDS,

having been first duly sworn, deposed and testified as follows:

Direct Examination

By Mr. Arndt:

Q. What is your name, please?

A. W. N. Wilds.

Q. Are you president of American Crystal Sugar Company? A. That is correct.

Q. How long have you been president?

A. The former president passed away the early part of October, 1933, and I carried on in the capacity of vice president until March, 1934, when I was elected president.

Q. Now, I assume you are familiar in general with the contract used by American Crystal Sugar Company in purchasing sugar beets for its Rocky Ford factory in Colorado. [200] A. Yes.

Q. And I assume you are familiar with the provision of it that in 1938, 1939, 1940 and 1941 provided that the price per ton of the beets shall be determined on the average sugar content of the beets delivered under this contract, and the average net return, as hereinafter defined, received for sugar sold by the factories located in the Arkansas Valley in Colorado, on the line of the Atchison, Topeka and Santa Fe

(Deposition of W. N. Wilds.)

Railroad. How long had that form of contract been used at the Rocky Ford factory?

A. Well, I can't answer that definitely, but for a number of years, I would say.

Q. Now, referring to the year 1938, in the factories for which Crystal purchased beets other than California and other than Colorado, did Crystal use a form of contract in which the growers were paid upon a method in which the payment depended in part upon the return from more than one factory?

A. Yes.

Q. And where did that occur?

A. Mason City, Iowa, in the northern part of the state, and Chaska, Minnesota, which is in the southern part of Minnesota. Those two plants drew beets partially from adjoining territories.

Mr. Works: May I clarify that? You are referring to factories operated by the same company?

The Witness: The same company, yes.

Q. In those two instances was the rate determined in part by a factory owned by any other company? A. No.

Q. And in any of the other factories operated by Crystal other than Colorado or California was the joint return method used? A. No.

Q. Now, in reference to the Colorado situation, what other beet sugar company was included as having a factory in the Arkansas Valley in Colorado on the line of the Atchison, Topeka and Santa Fe Railroad? A. The Holly Sugar Corporation.

Q. Now, I notice from the form of contract that

(Deposition of W. N. Wilds.)

was furnished me, that in 1942, in Colorado, this joint return method was no longer followed, and for 1942 the grower was paid upon the returns from Crystal alone, is that correct?

A. I would have to refresh my memory because those contracts you have there are authentic.

Q. I will show you contract furnished me for the season 1942 for Rocky Ford and for the San Luis Valley, and call your attention to paragraph 4.

A. Suppose you just read that paragraph.

Q. All right.

A. That is correct.

Q. Now, following the crop year 1942, did Crystal ever [202] again use in Colorado a method of payment in which the factory owned by any other company was used?

A. I would say, without being able to check all those contracts, no, for the reason that the government participated in setting the price for beets during the war period.

Q. Now, in Southern California, how long did the joint method of paying growers continue?

A. I can't tell you the year in which it was discontinued, but it was before the time the government commenced to participate in the payments to be made to growers for beets. You see—this may seem strange, but, with the business I have to do, I really can't remember those dates; it is impossible.

Mr. Works: I think they are pretty well documented.

Q. Did you have any conversation with anyone

(Deposition of W. N. Wilds.)

connected with Holly Sugar Corporation or Spreckels Sugar Company regarding the change in the form of contract used in the Clarksburg factory area from the 1938 method to the 1939 method?

A. Mr. Zitkowski was in charge of our agriculture—

Mr. Works: The question is, whether you talked to anybody.

The Witness: Oh, no, I don't remember talking to a soul. I wouldn't have had anything to do with it, because he is the one that figured out the details.

Q. Then, insofar as Crystal was concerned, the decision to change from the 1938 form to the 1939 form in California [203] was made by Mr. Zitkowski?

A. No. He presented the facts to me, and I was the one that made the final decision.

Q. When did he present the facts to you?

A. Just before the contract was issued; I can't remember the date.

Q. Now, the minutes of the board of directors show that on October 3rd, 1938, the 1939 contracts for Oxnard and Clarksburg were approved.

A. If that is what is shown in the minutes, that is correct.

Q. How long before that date did you have your first discussion on the subject with Mr. Zitkowski?

A. Before we presented it to the board. Here is the plan: Mr. Zitkowski and his assistants worked out the details of these proposed contracts. They brought them to me and I made certain tests for

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my own personal information to see whether or not, under the scale contract proposed and the estimated amounts that we might receive from sugar, we could make a profit. If those short individual tests showed that we could not make a profit, then he had to do some more calculating.

Q. I am particularly referring to the change from the 1938 to the 1939, in respect to the fact that the 1938 contract for Clarksburg provided the growers were to be paid [204] upon the basis of the net returns from Clarksburg alone, while the 1939 contract provided that the growers who dealt with Crystal in the Clarksburg district were to be paid upon the joint net average return of all factories north of the 36th parallel in California. Now, it is that particular change that I am inquiring about.

A. May I elaborate a little on that in giving you a reply?

Q. I want to know whether you talked about that to anyone connected with Holly or Spreckels.

A. No, no, I did not, I did not.

Q. Then, so far as you are concerned, that matter was initiated by Mr. Zitkowski, is that correct?

A. I wouldn't say it was. May I elaborate for a little bit?

Mr. Works: You have a right to explain your answer when it is called for.

The Witness: Here is the situation: I do not feel that the beet industry has any apologies to make to anyone for settling on a joint net basis, even though it may be a joint net with other companies. I say

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that for the reason that, in order to stabilize the industry, a joint net is the preferable way to settle with your growers, not only from the growers' standpoint, but from the processors' standpoint. I may turn that around, not only from the processors' standpoint, [205] but from the growers' standpoint. As an illustration, we have a plant at Clarksburg that is capable of slicing beets say, from 15,000 acres. From time to time, there are 100,000 to 150,000 acres of beets grown in that area. Now, suppose, just for the purpose of illustrating, Crystal nets \$6.00 per bag for its sugar, and Holly and Spreckels net \$5.50, the following season all of the growers would want to grow for Crystal because we netted the most. We can't take all those beets, there is only a certain quantity we can process. When we turn down these growers of Holly and Spreckels when they come to us and want us to take their contracts, they say, 'Well, to hell with beets; I am not going to grow beets any more. If my neighbor across the road gets more for his beets than I do for mine, I am not going to grow any more beets,' with the result the entire industry suffers. That can be reversed. Maybe next year Holly nets \$6.00, and Crystal and Spreckels net \$5.50. It keeps the industry in a turmoil constantly without getting any more for the growers or for the processors. Carry that thought just a little further. The mere fact that we have continued to take a joint net and settle on a joint net at Chaska and Mason City through these many years, and we still do, and that for a number of years East Grand Forks grow-

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ers were settled on a net return from the East Grand Forks plant until we finished Moorehead last year, when those two plants drew beets from much the same area, then we started to [206] settle on a joint net basis with our growers in that area.

Now, let me go a little bit further than that. It used to be, if you wished to express your opinion of inability of some individual you would say, 'Well, that man should be a farmer.' That day is past. We have some of the smartest men in the business, now, on farms, and I feel this way, that if those farmers in Minnesota and North Dakota and Iowa had felt the company was discriminating against them by settling on joint nets, they would have kicked over the traces long before this.

Mr. Arndt: I move to strike out the various comments of the witness as not responsive.

The Witness: That is merely in explanation of the question you asked.

Q. Now, referring to the change in California between the 1938 form of single average return of Clarksburg and the 1939 form of return, combined with Holly and Spreckels, at the time of your discussion with Mr. Zitkowski, when he presented that to you for the first time, and at the time you presented the matter to the board of directors, did you have before you the results of Crystal's operations, Spreckels' operations, and Holly's operations in California north of the 36th parallel during any of the preceding years?

A. I should say not. I had Crystal's.

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Q. And, then, you didn't know whether Crystal had done better or worse than the other two companies? [207]

A. During those years?

Q. During the preceding years.

A. Financially?

Q. No, insofar as the average net return was otherwise.

Mr. Works: Sugarwise.

The Witness: Netwise?

Mr. Works: Yes.

A. For what years?

Q. 1937 and 1938, or either of them, the crop years of 1937 and 1938.

A. I can't say offhand; I don't know; I don't know.

Q. Have you read Mr. Zitkowski's deposition?

A. I tried to read it, but the copy I had was so poor I could only read a portion of it. I couldn't get the full drift of his deposition.

Q. Are you aware of the fact he testified he had nothing to do with the determination of this change, and that it came from you, and that you informed him of the change, and then he told the growers and put it into effect?

A. No, I don't—repeat that again.

Q. (Last question repeated by reporter.)

A. No, I can't say that I recall telling him to put that into effect, because he was in charge of the operations and he figured up the contracts and presented them to me for approval. [208]

Q. I want to show you, call your attention, to the

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answer to Interrogatory 39, which is contained at page 139 of the answers.

A. May I say this: I was out of the state when those were prepared, as I recall it, and have never studied them.

Q. This refers to a letter.

Mr. Works: What page?

Mr. Arndt: I have 139 of the answers.

Q. This is a form of letter from Spreckels Sugar Company to Holly Sugar Corporation and American Crystal Sugar Company, dated August 16th, 1940. It says in the third, fourth and fifth lines of the first paragraph, 'we discussed with you the appointment of Messrs. Lybrand, Ross Bros., and Montgomery as accountants for the Spreckels Sugar Company.' Was that discussion with you?

A. I don't remember discussing it with them at all. I may have, but I doubt it. But that letter was written after the contract was put out; it must have been. Therefore, it had no bearing on the putting out of the contract.

Q. During the cropping years 1939, 1940 and 1941, during which the joint return method was in force in the Clarksburg area, did you make any endeavors to ascertain whether the growers received more or less under that method than they would have received under the single return method?

Mr. Works: Which growers? [209]

Mr. Arndt: Growers in the Clarksburg district having contracts with Crystal.

A. Well, I don't know how one could figure that,

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because we did not have the figures of the other two, so I don't see how we could possibly have figured them.

Mr. Works: The answer is, you don't know whether it was more or less or as much?

The Witness: How would I know unless I had the figures of the other two companies? That is right.

Q. I want to show you a letter, copy of a letter, of November 6th, 1939, from H. E. Zitkowski to Mr. Lester J. Holmes——

Mr. Works: Which page?

Mr. Arndt: That is page 52 of the answers, 52, 53 and 54.

Q. ——and particularly call your attention to the second paragraph, which commences with the words 'Concerning the first objection,' and will ask you to read that paragraph. Now, did you ever see that or a copy of that before?

A. I may have.

Q. What is your best recollection?

A. I doubt very much that I saw it at the time, because Mr. Zitkowski carried on the correspondence directly with the factory managers, who reported to him.

Q. I call your attention to this portion which refers [210] to the Clarksburg contract: 'Concerning the first objection, which refers to an average net selling price for the sugar produced in Northern California, I think you yourself understand the principles behind this very thoroughly. The prin-

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cial objective therein is to attain, as far as this is possible, a higher average net receipt for sugar by avoiding, as much as possible, cut-throat competition, crosshaul of sugar, and other similar practices, all of which tend to depress the receipts for sugar and benefit principally the transportation companies and some of the dealers in sugar to the detriment of perhaps both the customer and the grower of beets, as well as, of course, the processor of such beets.' Did you ever have any discussion with Mr. Zitkowski regarding cut-throat competition or crosshaul of sugar?

A. Not that I can recall right now.

Q. Did you ever have any discussion with him as to how or in what manner the use of the 1939 form of the Clarksburg contract by Crystal in place of the 1938 form would in any way avoid cut-throat competition or crosshaul of sugar?

A. May I ask you one question so I will know what I am answering on this? Would you define cut-throat competition for me?

Q. These are Mr. Zitkowski's words, and I am asking you whether you ever discussed that subject with him. [211]

A. No, as far as I know, I never discussed that. That letter was a letter to the factory manager.

Q. Did you ever discuss the question of how the adoption of this new form of contract in 1939 in the Clarksburg area, as compared to the 1938 contract, would in any way avoid cut-throat competition or

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any kind of competition, or would avoid the cross-haul of sugar?

A. I don't know how I am going to answer those questions without giving some background.

Mr. Works: The question is, did you discuss these objections with him?

The Witness: There may have been times when I would walk into his office and he would say, 'I understand'—

Mr. Works: It isn't what you might have said. It is what you did say, if anything.

The Witness: Well, to the best of my recollection.

Mr. Works: As you recall.

The Witness: I can only answer to the best of my recollection, and that is I had none whatsoever.

Mr. Works: No man has any recollection better than his best recollection.

The Witness: That is right.

Q. Did you discuss with anyone from Holly or Spreckels in 1937, 1938 or 1939 cut-throat competition? A. No. That is absolutely no.

Q. Or did you discuss the crosshaul of sugar?

A. No. I will say I ought to explain this thing a little so this gentleman can understand it.

Mr. Works: You are doing it all right.

The Witness: But we are not getting all the real points of the thing.

Mr. Works: Mr. Wilds, we are not trying the case today.

The Witness: Oh, all right, all right.

Q. Did you ever discuss with any other officer or director or employee of Crystal in 1937, 1938 or

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1939 cut-throat competition or crosshaul of sugar or endeavoring to avoid them as far as possible, insofar as the operations of the Clarksburg factory or its product was concerned? A. No.

Q. Now, in reply to Interrogatory 99, which is found at page 205, the interrogatory asked what attempts, if any, were made by Crystal to ascertain for 1939, 1940 and 1941 cropping years the individual net returns from sugar sales by the other manufacturers of beet sugar having factories north of the 36th parallel.

A. Those are the years when they had the average net?

Q. Yes.

A. I think the sugar companies preserved their nets very carefully because they probably didn't want the others to know.

Q. The answer was, 'Crystal did not attempt to ascertain such returns except that by mathematical processes Crystal [213] worked out approximations of the said net returns.' Did you have anything to do with, or did you ever discuss or see such approximations that Crystal worked out?

A. I don't know how they would work out an approximation. No. I don't think it is possible.

Q. Then, as I understand your testimony, the first time that you had your attention in any way directed to a possible change in the Clarksburg contract from the single return to the joint return was when Mr. Zitkowski spoke to you about it?

A. That is correct.

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Q. Now, when did that conversation take place?

A. I couldn't tell you. It was at the time he was making calculations to see what we could pay to our growers in that area for their beets. As a matter of fact, our whole scale contract has always been based, not on how cheaply can we buy beets, but how much can we pay for beets and live.

Q. I am referring, now, only to the portion of the contract which changed from an average net return at Clarksburg to the joint net return of all factories north of the 36th parallel. Now, when you had that discussion with Mr. Zitkowski, who was present?

A. I don't know that anyone was present.

Q. What was said on that subject?

A. What subject? I am lost. [214]

Q. On the subject of change of the Clarksburg contract from the payment to the growers based upon the average net return of the Clarksburg factory to the average net return of all factories in California north of the 36th parallel.

A. As I recall it now, the government's participation during the war in the amounts to be paid beet growers eliminated the joint net return.

Q. The war didn't commence until 1941.

A. Yes.

Q. We are talking, now, about 1938 and 1939.

A. 1938, 1939 and 1940 we had the joint.

Q. And you had the joint for 1939, 1940 and 1941? A. That is right.

Q. So, sometime before the 1939 contracts were printed you had this conversation with Zitkowski.

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Now, that was before the war started. What I want to know is, what was that conversation?

A. I don't remember any such conversation. Read it if you have it and maybe I will recollect it.

Q. The conversation I am calling for is the conversation that you testified that you had with Zitkowski when Zitkowski first brought to your attention the recommendation for the change of the form of the contract from the single return to the joint return. That is the conversation I want.

A. Do you want to know who was present at such meeting? [215]

Q. Yes.

A. I doubt if there was anybody except Zitkowski and myself.

Q. What was said then?

A. I don't remember. I haven't the slightest idea.

Q. What was the substance of it?

A. He must have convinced me it was proper to switch from one to the other.

Q. What is the substance of what you said and what he said?

A. I really couldn't answer that. It has been too long ago.

Q. Are you positive that prior to that conversation with him you had no conversation with anyone connected with Holly or with Spreckels on that subject?

A. That is my recollection, yes.

Q. Are you positive of that?

A. As near as I can be.

Q. To refresh your recollection, was there any

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conversation that you had with anyone connected either with Holly or Spreckels or both in which there was a discussion of the fact that Crystal's net return from Clarksburg was much higher than the net return of either Holly or Spreckels?

A. I don't think the records will bear that out year after year.

Q. I am referring to the year 1937. [216]

A. Oh, I can't answer that, because I don't remember it.

Q. Did you have any discussion with regard to the cropping year 1937?

A. Not that I remember.

Q. To refresh your recollection, did you have a discussion with anyone connected with either of those two companies in which the statement was made that unless Crystal joined in using the joint net return for Clarksburg that war would be declared, or something to that effect?

A. Listen—no; they don't bluff us.

Q. Then, you are still positive that the first suggestion of this change came from Zitkowski?

A. I would say so, because he is the individual who usually presents a proposed contract for the coming season.

Q. Now, the question of crosshaul, is that a question that the sales department would be interested in or the production department?

A. We are all interested in it. The production department has nothing to do with it. It would be the sales and management. [217]

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Q. So, any question of avoidance of crosshaul would come from the——

A. Sales or myself.

Q. Sales or yourself? A. That is right.

Q. And during the years 1938, 1939 and 1940, was it not a fact that the Western Sales Department under Mr. Hardy was under your direct supervision? A. Correct.

Q. And that you had general charge of sales?

A. Correct.

Q. So that during those years any matter of crosshaul would be primarily your problem and not Mr. Zitkowski's?

A. That is right, Mr. Zitkowski had nothing to do with it.

Q. Does that refresh your recollection, that, and this letter of Mr. Zitkowski's referring to crosshaul and reference to competition? Does not that refresh your recollection as to who initiated the question of change of the Clarksburg contract?

A. Not one particle.

Q. Is it true that Crystal had no sugar beet factories between the State of Colorado and the State of California? [218]

A. We had Montana, if you want to call that between.

Q. Other than Montana, they had not?

A. No. That is right.

Q. Now, Interrogatory No. 116, the answer to which is found at page 218—Interrogatory 116 appears at page 32 of the Interrogatories—asked

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whether Crystal ever furnished any of its employees, agents or growers with data, statements, figures or certificates or copies thereof, showing the average net returns received by Holly or Spreckels.

Mr. Works: You don't mean average, do you?

Mr. Arndt: Yes.

Q. Net return received by Holly or Spreckels, or either of them, in California north of the 36th parallel, for the years 1937 to 1943. The answer to Interrogatory No. 116 says: "Crystal did not have any systematic procedure for furnishing any of its employees, agents or growers with data, statements, figures or certificates during the crop years 1937, 1938, 1942 as to the net returns per 100 lbs. of sugar received by Holly Sugar Corporation or Spreckels Sugar Company. There were undoubtedly some discussions covering this subject between Crystal employees amongst themselves and with growers." Did you take part in or listen to any of those discussions?

A. No, none of them.

Q. The answer to 117 states: "The data referred to [219] in the preceding Interrogatory relating to the crop years 1937, 1938 and 1942 were received primarily through newspaper accounts of payments made for beets by Holly Sugar Corporation or Spreckels Sugar Company or both, and some of the information was obtained from growers growing beets for Holly Sugar Corporation or the Spreckels Sugar Company when they received their final settlement statements for the respective crop years. There was no systematic form in which these data were furnished to employees or growers except as copies of

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the final settlement statements came to their hands from growers growing beets for our competitors.”

A. Of course, we had nothing to do with that.

Q. Did you ever see any of those newspaper accounts or any of those copies of the final settlement statements or any of the other data referred to in this interrogatory?

A. I don't think that I have ever seen any of the settlement statements. I am positive I never have. Naturally, I probably have seen clippings that were sent from there to the Denver office, that were in the papers.

Mr. Arndt: May I see the first minutes we have there?

Mr. Works: The Executive Committee?

Mr. Arndt: No; of the corporation. The very first one we had.

Q. I will show you the original minutes of October 3, [220] 1938, of the directors of this corporation, and call your attention to the fact that it shows you were present, and I call your attention to the portion at the bottom of the first page which says: “The 1939 beet contracts for the Oxnard and Clarksburg, California, factories were submitted to the meeting and the several changes from the 1938 contract for the respective factory districts were explained.”

A. Yes.

Q. Who did the explaining? A. I.

Q. What did you say?

A. I usually went into a meeting—

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Q. Not usually, but what did you do at that meeting, if you remember?

A. I explained what the differences were, but I don't remember what they were, now.

Q. Did you say anything to the meeting regarding the change in the form of the 1939 Clarksburg contract, insofar as the 1939 contract provided payment upon a joint average return from all factories located north of the 36th parallel, while the 1938 contract provided for an average net return of Clarksburg only?

A. I would say, absolutely not, for the reason that I carried into those meetings a very brief memorandum, and I doubt if I would have gone into all that detail. [221]

Q. Then, have you any recollection of any reason or reasons that Mr. Zitkowski gave you for that particular change?

A. I am satisfied it was with a view of stabilizing the industry. There is nothing more important to us than that.

Q. Did he discuss the question of crosshaul of sugar?

A. I doubt that very much, because he is not interested in it. I am really surprised it came to his mind.

Q. Did he discuss with you the question of the elimination of competition among purchasers of sugar beets? A. Not at all.

Q. Did he discuss with you the elimination of

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competition among the three factories in Northern California for the growers?

A. You mean, for the contracting of growers?

Q. Yes.

A. No. There always has been competition there, but there is nothing to discuss about it. We have men to go out and work on the growers to get them to sign, or they won't sign.

Q. That subject was not discussed?

A. No, not at all.

Q. Have you any recollection of any specific reason he gave you for this change?

A. Yes, to help to stabilize the industry, both for [222] our growers and ourselves.

Q. Did he use those words?

A. I can't say that; my memory isn't that strong, but the substance of it should be that.

Q. I want to read you the portions of the deposition of Mr. Zitkowski, commencing on page 85, the seventh line from the bottom.

“Q. Now, before you had this meeting with the committee of growers, did you have any discussion with Mr. Moroney, Mr. Fisk or Mr. Holmes?”

“A. Oh, I had frequent discussions with Mr. Moroney. I mean, I met him often.

“Q. I mean, with reference to this idea of determining the price to be paid on the basis of average net returns.

“A. I don't recall such other meetings with Mr. Moroney, and—say that for the reason that the matter of sales policy was not determined by me.

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“Q. Then, at the time that you attended this meeting with the growers, at which Mr. Moroney and Mr. Fisk and Mr. Holmes were present, the sales department of Crystal had already determined on this new method for 1939, isn't that correct?

“A. Well, I would say it had recommended that we follow that policy as we did in other territories.

“Q. Now, who told you this decision of the sales [223] department?

“A. Undoubtedly, the president of the company.

“Q. That is, Mr. Wilds? “A. Mr. Wilds.

“Q. Then, you were told of the decision after the decision had been made by the sales department and approved by Mr. Wilds, is that correct?

“A. I didn't put it just that way. A recommendation had been made by the sales department, or by the sales policy, which was in frequent discussion, because we had been proceeding on that sort of a method for more than 25 years, or maybe I am wrong about the 25. Since 1917 to 1938; that is 21 years, I guess; and we were doing the same thing in Colorado, and were settling on a joint factory net in our Iowa and southern Minnesota territory, so it was just an accepted condition under which we had been operating for many, many years.

“Q. So, the Iowa and southern Minnesota territory was based upon factories owned by Crystal and no one else, isn't that correct?

“A. That is correct.

“Q. Then, at the time this meeting was held with the growers, following August, 1938, the sales de-

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partment already recommended the joint return contract? "A. That is correct. [224]

"Q. And prior to that meeting, the sales department had already taken the matter up with Spreckels and Holly to see if it was satisfactory to them.

"A. Well, I don't know who talked with who, or how the approach was made.

"Q. But, in any event, the approach had been made prior to this meeting with the growers?

"A. That is correct, the recommendation had been made prior to the meeting with the growers, and it was our job to inform the growers of the intent and purposes.

"Q. And prior to this meeting with the growers, the okay had been secured from Spreckels and Holly to have this plan go into effect?

"A. Well, the okay; I don't know what you mean by okay.

"Q. I will put it in a different way. Crystal could not have put this plan into effect unless it was consented to by Holly and Spreckels, isn't that correct?

"A. I don't think Crystal initiated the proposal.

"Q. Who initiated it?

"A. I don't know.

"Q. In any event, it was initiated prior to the time of this meeting that you have testified about with the growers? "A. That is right. [225]

"Q. And regardless of who initiated it, it was recommended by the sales department of Crystal and was approved by Holly and Spreckels prior to this meeting with the growers?

(Deposition of W. N. Wilds.)

“A. It was recommended to us prior to that time.

“Q. When you say ‘to us,’ you mean to Holmes and yourself?

“A. Yes, the operating department.

“Q. So that, insofar as you know, this project originated with either Holly or Spreckels, came to the sales department, the sales department approved it and recommended it to the production department?

“A. I don’t know what the procedure was as far as Holly and Spreckels and our company are concerned.”

Now, do you know how or in what manner this proposal was first brought up for discussion between Spreckels, Holly and Crystal?

A. No, I do not know. I do know this, that our purchasing departments had nothing whatsoever to do with that feature of the beet contract. Mr. Zitkowski undoubtedly assumed that, since I eventually approved it, the purchasing people had gone over it. As a matter of fact, I think, if you ask the purchasing people today if they knew that during those years there was a net return planned for settling with growers, they will say no. The instructions of our purchasing departments—we had an eastern and western—were that [226] they get the last penny out of our share, not anybody else’s share.

Mr. Graham: You mean, purchasing department?

The Witness: Sales department, I should say. I doubt if our sales department knew anything at all about that beet contract. I would like to elaborate on

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that, but you won't let me. I did, because I had charge of the production and the sales.

Q. You did what?

A. I knew that that feature was a part of the beet contract.

Q. Now, then, after hearing this testimony of Mr. Zitkowski's, you still state that he was the one who first brought this matter to your attention?

Mr. Works: I will object to the form of the question as being argumentative and an improper attempt to cross examine one witness with reference to the testimony of another, and no proper foundation laid.

Q. Will you answer the question, please?

Mr. Works: And other objections, which will be specified at the trial. You may answer.

The Witness: Read the question, please.

Q. I will reframe the question. Is your memory in any manner refreshed by what I have read to you from Mr. Zitkowski's testimony? [227]

A. No. That was a bad answer, for the reason I should elaborate on it to clarify it, but you won't let me, so the answer is no.

Mr. Works: I won't stop you. Mr. Arndt is conducting the examination. He is the one that has the say.

The Witness: How about it?

Q. If the witness wants to make an explanation I won't stop you; I will reserve my rights to object afterwards.

A. Mr. Zitkowski has been with the company

(Deposition of W. N. Wilds.)

more than 50 years. He has had charge of the factory operations and the agricultural departments. Not only do the officers of the American Crystal Sugar Company feel that he is the outstanding factory operation and agricultural man in the United States, but other sugar companies will tell you the same thing. Now, Mr. Zitkowski has never had any experience in traffic, accounting, in sales, treasury work, or anything of that kind, never a day. I think I can say without fear of contradiction that he has never sold a bag of sugar in his life. He has had his hands full attending to his two departments, and I think these questions were unfair to ask an individual not connected with the departments and business involved.

Mr. Works: Never mind. They were asked, anyway.

The Witness: I don't want to appear to contradict Mr. Zitkowski's testimony. [228]

Mr. Works: There is no question but what you approved that setup and ultimate result?

The Witness: Certainly, I did.

Mr. Arndt: That is all.

(Signed) W. R. Wilds

Subscribed and sworn to before me at the City and County of Denver, State of Colorado, this 28th day of October, A. D. 1949.

My commission expires March 5th, 1942.

(Signed) Catharine M. Prince, Notary Public.

(Notarial Seal.) [229]

Mr. Arndt: The next deposition is that of Mr. Kraybill, Mr. W. E. Kraybill, and this is found at page 95:

“Q. What is your name, please?

“A. W. E. Kraybill.

“Q. You reside in Denver? “A. Yes, sir.

“Q. What is your connection with the American Crystal Sugar Company?

“A. Secretary and treasurer.

“Q. And how long have you held that position?

“A. Since 1934 as treasurer, and since 1936 as secretary.

“Q. I have shown you items A to H, both inclusive, of item 8 of the subpoena here. Now, did you ever have any conversations with anyone connected with Holly Sugar Corporation or Spreckels Sugar Company regarding any of those matters during the years 1937 to 1943, inclusive?

“A. No, sir.

“Q. Did you ever see or have any correspondence with anyone connected with Holly or Spreckels, other than the question of the appointment or designation of the certified public accountant?

“A. No.

“Q. Did you ever have any discussion with anyone connected with Crystal, either as an officer, employee, or director, [230] during the years 1937 to 1943, regarding any of those matters, other than the selection of the certified public accountant to which I have referred?

“A. What do you mean by discussion?

(Deposition of W. E. Kraybill.)

“Q. Conversation or discussion.

“A. Well, I prepared the contracts according to the instructions.

“Q. Contracts with whom?

“A. Well, beet contracts.

“Q. Did you ever have anything to do with the preparation of the 1939 California Clarksburg contracts?

“A. Prepare the form for the printer.

“Q. From whom did you receive your instructions?

“A. I received them usually from Mr. Zitkowski. I can't tell definitely just who I received instructions from for the preparation of those.

“Q. Did you have any discussion with either Mr. Zitkowski or Mr. Wilds as to the reason for the change in the 1939 form from the 1938 form?

“A. No, because that wasn't any of my business.

“Q. Then, the only discussion you had was in connection with the printing of either the form or proposed forms of contract, without going at all into the reasons for any of those contracts, is that correct? “A. That is right.” [231]

That ends Mr. Kraybill.

The next is Mr. J. A. Summerton, found at page 98:

“Q. What is your name, please?

“A. J. A. Summerton.

“Q. You reside in Denver? “A. Yes, sir.

(Deposition of J. A. Summerton.)

“Q. What is and has been your connection with American Crystal Sugar Company?

“A. Well, from the time I started?

“Q. Oh, go back to 1935 or six.

“A. Well, for the period 1930 until January, 1936, I was cashier at the Oxnard factory, and from January, 1936, to some time the latter part of 1946, I was purchasing agent.

“Q. You mean at Oxnard or the home office?

“A. In Denver. And from 1946 until March 1st of this year I was comptroller, and vice president and comptroller since that time.

“Q. Have you seen the subpoena herein?

“A. I have.

“Q. Now, referring to paragraph 8 thereof, and to items A to H, just read them over. Did you ever have any discussion with anyone connected with Holly or Spreckels, or were you present at any discussion at which any of such persons were present, at which any of those items were discussed?

“A. No. [232]

“Q. Did you at any time between 1937 and 1943 discuss any of those matters with anyone connected with Crystal, or were you present at a meeting at which any of those matters were discussed?

“A. No.

“Q. Did you ever see or take part in any correspondence or see any communications regarding any of those matters during those years?

“A. Not during those years.”

Then Mr. Hayden starts at page 100:

(Deposition of J. B. Hayden.)

“Q. What is your name, please?

“A. J. B. Hayden, H-a-y-d-e-n.

“Q. You live in Denver, do you?

“A. That is right.

“Q. And what is your connection with Crystal?

“A. Executive vice president.

“Q. How long have you held that position?

“A. Since March 1st, 1949.

“Q. And prior to that what was your connection with Crystal?

“A. I was vice president and general manager from 1946 to 1949.

“Q. And prior to 1946?

“A. I was eastern salesmanager from 1936 until 1946.

“Q. Now, were you served with a subpoena in this case? [233]

“A. Yes, I was.

“Q. Now, I show you a copy of the subpoena, and particularly call your attention to items A to H of paragraph 8, and ask you to read them over. Did you at any time in 1937 up to 1943, inclusive, have any conversation with, or were you present at, any conversation at which there was present any representative officer or employee of the Holly Sugar Corporation or Spreckels Sugar Company, at which any of the matters referred to in items A to H of paragraph 8 of Exhibit A to the deposition was or were discussed?

“A. No, sir.

“Q. Did you ever have any discussion with or were you ever present at any discussion with any officer or employee of the American Crystal Sugar

(Deposition of J. B. Hayden.)

Company regarding any of those matters during those years?

“A. I didn’t know that we had a joint net settlement during those years. I was eastern salesmanager and was not advised of it.”

That completes the depositions except as to certain matters that appeared in the deposition which were not the subject of a particular witness’s testimony, which I will next offer.

At page 64 of the same deposition there was read into the record an extract from the minutes of the executive committee—pardon me—from the minutes of the board of [234] directors of the defendant American Crystal Sugar Company as follows, and I now offer that into evidence:

“The 1939 beet contracts for the Oxnard and Clarksburg, California, factories were submitted to the meeting and the several changes from the 1938 contracts for the respective factory districts were explained. After discussion, and upon motion duly made and seconded, it was unanimously resolved the forms of the 1939 beet contracts as submitted for the Oxnard and Clarksburg, California, factories be approved.”

Now, there are certain other matters that are set forth in the books of account which were read into the minutes, which I think could be handled more simply by including them in the stipulation that we will present, so instead of reading them now—they are just figures taken from the books, so instead of

reading them now I will put them in the stipulation that we are going to file.

Does the court desire to take a recess at this time?

The Court: I am going to ask a question so it will be clear in the record. As I understand there is no claim that beets involved in this hearing, in their original form, ever crossed a state line.

Mr. Arndt: That is correct.

The Court: It is only the products of the beets that [235] entered into interstate commerce.

Mr. Arndt: That is correct.

The Court: To-wit, sugar.

Mr. Arndt: That is correct.

Mr. Works: So stipulated.

Mr. Arndt: And that was the situation that arose previously and that was the reason we took the word "sugar" out before because your Honor wanted to be sure we weren't claiming that the beets crossed the state line.

The Court: And I still want that.

Mr. Arndt: And that is still our position.

The stipulation will show, your Honor, that certain molasses that was produced from cane in the Hawaiian Islands, was shipped into the Oxnard plant and was used in the Oxnard plant together with beet pulp that came as a byproduct of the manufacture into sugar of both Clarksburg and Oxnard beets at the Oxnard plant, and the resultant molasses, beet pulp was sold.

That is the only additional item that has developed as to that. In other words, we have an interstate shipment of molasses involved also.

Mr. Works: That doesn't affect the situation with reference to beets.

Mr. Arndt: That doesn't affect the situation with reference to beets. No beets crossed the state line.

The Court: We will take a five-minute recess at this time.

(Short recess.)

The Court: Proceed, gentlemen.

Mr. Arndt: At this time, if the court please, we desire to offer certain exhibits—pardon me, certain documentary evidence into evidence as exhibits.

The first 23 of those listed in our list of exhibits are documents that are attached either to the amendment to the answer or to the amended complaint.

The Court: Just how are we going to keep that straight?

Mr. Arndt: By having them offered by reference. In other words I have them on this list of exhibits. Each one is referred to as to just what it is. They are all printed documents.

Mr. Works: May I peek over your shoulder at your list?

Mr. Arndt: Yes.

Mr. Works: The first 13 seem to be contract forms with other companies to which we object as being immaterial.

Mr. Arndt: Inasmuch as they are attached to the answer I don't see how they can very well claim they are immaterial.

Mr. Works: Our answer?

Mr. Arndt: These are taken from your own answer.

Mr. Works: The objection is certainly withdrawn.

Mr. Arndt: The first 23 documents are taken from your [237] answer.

Mr. Works. I don't recall now how that happened but if we attached them I am disqualified.

Mr. Arndt: It may not be necessary even to offer them if they are a part of their answer but I do offer them.

Mr. Works: I don't care. It doesn't make any difference.

The Court: The only thing is, gentlemen, when we get all through somebody is going to be unhappy and then what is going to be sent to the Circuit Court. That is what I want to know.

Mr. Arndt. Well, I am offering them by reference if the court please.

The Court: You are offering them by reference. What does that mean to me? When I have to read them how am I going to know what you are talking about when you brief this case and when the Circuit Court doesn't know anything about the background until it gets the record.

Shouldn't those be offered in evidence and in some manner designated in the record as to what they are so when the record goes to the Circuit Court that court will know what you are talking about.

Mr. Arndt: For example I would offer as our Exhibit 1 by reference the Los Alamitos Sugar Company and Holly Sugar Corporation the 1938-1939 agreement for Imperial, which is Exhibit 1 of the

amendment to the answer to the first amended [238] complaint. That describes it.

Mr. Works: May I make one suggestion along the line of what his Honor is thinking about. If there is an appeal in this case there is going to be a printed record. You also have the right to take up original exhibits. Now, why don't we either tear these out of the answer or else put in duplicates so they can remain as exhibits and they won't have to be printed, because that is going to cost somebody a lot of money.

The Court: As I understand the first 23 of these items are a part of the answer or the pleadings.

Mr. Arndt: Yes, they are.

The Court: Of the defendant.

Mr. Works: They would be in the judgment roll ordinarily.

The Court: If you stipulate they be deemed in evidence they will not have to be duplicated.

Mr. Works: All right.

Mr. Arndt: Then I will read the exhibit numbers as they appear in the documents themselves.

Mr. Works: Why don't you hand them to the clerk and let him copy them?

Mr. Arndt: All right, and they will be considered as read.

The Court: Are they all on that one document?

Mr. Arndt: Yes, the first 23 items of that document. [239]

The Court: I mean the rest of the items that you are going to offer.

Mr. Arndt: This contains all items up to item 55. Then I have another document that starts at 55 and

goes on. In other words, items 24 to 55 are documents which I will now offer.

The Court: That you are going to present?

Mr. Arndt: Yes.

The Court: Actually physically present them?

Mr. Arndt: Yes.

The Court: Then read into the record the first 23 which will be deemed as offered and which are now a part of the pleadings and so designated.

Mr. Arndt: The first is Los Alamitos Sugar Company and Holly Sugar Corporation, 1938-1939 agreement, Imperial Valley, which is Exhibit 1 of the amendment to the answer to the first amended complaint.

No. 2 is the Holly Sugar Corporation, Santa Ana, 1939 agreement, which is Exhibit 2 to the same.

No. 3 is Holly Sugar Corporation, Santa Ana, 1940 agreement, which is Exhibit 3 to the same.

No. 4 is Los Alamitos Sugar Company and Holly Sugar Corporation, 1940 local contract, which is Exhibit 4 to the same.

No. 5 is the same for Imperial Valley, 1940-1941 to the [240] same.

No. 6 is the Holly Sugar Corporation, Santa Ana, 1941 agreement, which is Exhibit 5 also to the same.

No. 7 is Los Alamitos and Holly local 1941, which is Exhibit 7 to the same.

No. 8 is Los Alamitos, Long Beach, 1941, which is Exhibit 8 to the same.

No. 9 is Union Sugar, Coastal, 1939, which is Exhibit 9 to the same.

No. 10 Union Sugar, San Joaquin Valley, 1939, which is Exhibit 10 to the same.

11 is Union Sugar, Coastal, for 1940, which is Exhibit 11 to the same.

No. 12 is Union Sugar, marked "Probably San Joaquin Valley," 1940, which is Exhibit 12 to the same.

No. 13 is Union Sugar, Southern, 1941, which is Exhibit 13 to the same.

No. 14, American Crystal Sugar, Coastal, for 1939, which is Exhibit 14, to the same.

No. 15 is American Crystal, San Joaquin Valley, 1939, which is Exhibit 15 to the same.

No. 16 is American Crystal, Coastal, 1940, which is Exhibit 16 to the same.

17, American Crystal, San Joaquin Valley, 1940, which is Exhibit 17 to the same. [241]

No. 18, American Crystal, Coastal, which is Exhibit 18 to the same.

No. 19, American Crystal, San Joaquin Valley, 1941, which is Exhibit 19 to the same.

No. 20, American Crystal, 1938 Clarksburg is Exhibit A to the amended complaint but that is 1938 Clarksburg.

No. 21 is American Crystal, 1939 Clarksburg, which is Exhibit 13 to the amended complaint.

No. 22 is American Crystal, 1940 Clarksburg, which is Exhibit C to the amended complaint.

No. 23 is American Crystal, 1941 Clarksburg, which is Exhibit D to the amended complaint.

The Court: You are building up a big record in view of the fact the documents are all admitted and

recognized by the parties. You are going to need a sugar factory of your own to pay for it.

Mr. Works: Apparently Mr. Arndt wants these things. I don't see where they help or hinder in any way, but he is making his own record.

The Court: It looks like he is the engineer.

The Clerk: Shall I find each one of those documents and put a mark on them?

The Court: They are just deemed in evidence, that is all.

Mr. Arndt: These next documents have all been exhibited to counsel. [242]

First we offer Exhibit 24.

The Court: No exhibits have actually been offered yet. It is only by reference.

Mr. Arndt: Yes.

The Court: Then the next exhibit you offer will be Exhibit 1. You haven't introduced any exhibit in evidence yet.

Mr. Arndt: The others I have numbered from 1 to 23 and I have these numbered from 24 on.

The Court: All right, let us follow the numbers, Mr. Clerk.

Mr. Arndt: As No. 24 we offer the American Crystal Oxnard contract for 1935.

The Clerk: Plaintiff's Exhibit 24.

Mr. Arndt: As No. 25 we offer the Amalgamated Sugar, Holland District, 1934-1935 contract.

The Clerk: Plaintiff's Exhibit 25 in evidence.

Mr. Arndt: As No. 26 the American Crystal, Oxnard-Yellow, 1936 contract.

The Clerk: Plaintiff's Exhibit 26 in evidence.

Mr. Arndt: As No. 27 American Crystal, Oxnard-White contract for 1936.

The Clerk: Plaintiff's Exhibit 27 in evidence.

Mr. Arndt: As No. 28 American Crystal, Delivery at Tracy or Alvarado, 1936 contract. [243]

The Court: What materiality do these old contracts have, Mr. Arndt?

Mr. Arndt: I want to present a complete picture of the situation.

The Court: The period you are complaining about is 1940 and 1941.

Mr. Arndt: That is right and I am showing what transpired before and what transpired afterward. I am presenting all the contracts.

The Court: There isn't any dispute about them, is there, counsel?

Mr. Works: Not that I know of, your Honor.

The Court. That prior to these three years they paid off at the individual plant and afterwards it was the average during these three years. It was the average and that was the change.

Mr. Works: That is right. No dispute about that at all.

Mr. Arndt: I would like to offer all the contracts before and after.

The Court: Why don't you offer them as one exhibit?

Mr. Arndt: Very well. I offer as Exhibit 28 the Amalgamated Sugar Company, Clarksburg, 1935-1936 contract.

As No. 30 I offer the American Crystal, Oxnard, White, 1937 contract. I offer American Crystal, Oxnard, Yellow, 1937 contract. [244]

I offer American Crystal, Clarksburg, 1937 contract.

I offer American Crystal, Oxnard, White, 1938 contract.

I offer American Crystal, Oxnard, Yellow, 1938 contract.

I offer American Crystal, Oxnard, 1942, two contracts.

That will all be one exhibit, Exhibit 29.

The Court: Admitted.

Mr. Arndt: That consists of what was on the list of exhibits as Exhibits 29 to 35, inclusive.

I offer as our next exhibit the contracts of the National Sugar Manufacturing Company for 1938, 1939, 1940, 1941 and 1942, consisting of five contracts.

The Court: Admitted.

Mr. Arndt: That was our old 36 and it will now be offered as Exhibit 30.

The Court: Admitted.

Mr. Arndt: As Plaintiff's next exhibit we offer the American Crystal, Clarksburg contract, for 1943, 1944, 1945, 1946 and 1947, consisting of five contracts.

The Court: Admitted.

The Clerk: Plaintiff's Exhibit 31.

Mr. Arndt: That was our old 37. We now offer it as 31.

The Court: It is admitted.

Mr. Arndt: Now as our next exhibit, Exhibit 32, we offer the American Crystal, 1939, 1938, 1940, 1941, and 1942, [245] for Missoula, Rocky Ford, San Luis Valley, Albuquerque and Texas Panhandle, Grand Island, Mason City, Chaska, East Grand Forks, for

North Dakota, East Grand Forks for Minnesota. Those are our old numbers 38, 39, 40, 41 and 42. I offer those in evidence.

The Court: Admitted.

The Clerk: Plaintiff's Exhibit 32.

Mr. Arndt: We next offer a letter from American Crystal Sugar Company by Mr. Lester Holmes to R. C. Zuckerman, dated July 20, 1943, which is our old Exhibit 43, referring to an extra 50 center per ton for beets delivered prior to December 1st, 1943.

The Court: Admitted.

The Clerk: Plaintiff's Exhibit 33 in evidence.

Mr. Arndt: As our next exhibit, Exhibit 34, we offer the old 44, copy of a letter from Mandeville Island Farms, Inc., by Roscoe C. Zuckerman, to Mr. Lester Holmes, manager of Crystal Sugar Company, Clarksburg, California, dated November 18, 1940, with reference to certain field tests as to the results of the early harvest of sugar beets.

The Clerk: That is Exhibit 34.

The Court: What is the materiality of that? I don't like to get you started again.

Mr. Arndt: Under the contract, as the Supreme Court pointed out, the company could direct when beets were to be harvested. During this period of years they would tell the grower when to deliver and when not to deliver, and so on. They were insisting in certain years on early delivery. We will show that the grower objected, and this is the result. Here the grower makes tests and advises the company, when he has to deliver early, he has less weight and less sugar content than if he were allowed to hold the beets—

The Court: I know, but the agreement before the three years in question had the same provision.

Mr. Arndt: That is correct.

The Court: In other words, there would be nothing illegal in this contract if it was not the result of a conspiracy. In other words, the American Crystal Sugar Company could make with the grower any kind of a contract he wanted [247] to, as long as it was not the result of a conspiracy.

Mr. Arndt: I wouldn't go quite that far, in view of a decision of the Circuit Court in one of the eastern circuits in connection with a somewhat similar contract. They said it was unconscionable, the various terms and conditions that were put in there.

The Court: I know, but as far as an antitrust case is concerned——

Mr. Arndt: That is correct, your Honor.

The Court: As far as an antitrust case is concerned, it has to be as the result of a combination.

Mr. Arndt: That is correct. This also goes again to the situation of showing the unfairness of using the Clarksburg 1939, 1940, and 1941 individual return as a basis for damages where, in some of the years when the beets were shipped to Oxnard, and some of the years the grower was forced to harvest beets early, over his own desire, so the company could ship them to Oxnard, this shows the result of early shipping when the company insisted on having them shipped early.

The Court: I know, but what you are complaining about in this case, as I understand it, is the aver-

age return upon which the different refineries agreed.

Mr. Arndt: That is right.

The Court: These other matters have nothing to do with [248] the antitrust suit.

Mr. Arndt: Except as they go to show that it is improper to use Mr. Works' theory of the 1939, 1940, and 1941 individual Clarksburg returns.

Mr. Works: Your Honor, in order to cut the Gordian knot, I will object to this exhibit as entirely immaterial.

The Court: I think it is immaterial, but if he has anything upon which he thinks he can tie into that, why, let him go ahead.

Mr. Arndt: As our next exhibit, we will offer a group of photostatic copies of the books and records of Crystal, taken from the Analysis Ledger of Control Accounts, being the dried pulp sales for the fiscal year ending March 31, 1942, the wet pulp account, the molasses sales account, for the year ending March 31, 1942, the same information for the year ending March 31, 1941, the same for the year ending March 31, 1943, being items 45 to 53 of our former list of documents. We offer them as one document now.

The Court: I am going to admit these exhibits. I am under the impression, Mr. Arndt, you are going to have a heavy burden to show where they are material to any issue in the case. I know you are quite convincing and quite an advocate when it comes to writing, but you are going to have a lot of trouble in that respect, because I don't see where the pulp sales have anything to do with it. You may be able to [249] show me. I am just calling your attention to that at

this time. You might be able to convince me about it as you did in the Santa Anita race track and the railway, but you are going to have a new problem now.

The Clerk: That will be Exhibit 35.

Mr. Arndt: As our next exhibit, we offer certain data furnished by Crystal to us, showing the number of bags sold in the crop years 1940 and 1941 from Clarksburg, and the crop years 1939, 1940, and 1941 from Oxnard, showing the gross receipts and sales and marketing expense that were included in determining the joint net return. This is contained in item 54 of our previous document.

The Clerk: That is Exhibit 36.

Mr. Arndt: As our next exhibit, we offer photostatic copies of the office records of Wood, Crump, Rogers, Arndt & Evans, showing the daily time record and the amount of time spent on these two cases from day to day and from month to month and from year to year in connection with the application for attorney fees.

The Court: Is that also from decade to decade?

Mr. Arndt: Yes, your Honor.

The Clerk: That will be Exhibit 37.

Mr. Arndt: For the purpose of aiding the Clerk in following the next exhibit, I hand him a copy of the document headed "Plaintiffs' Additional Exhibits." What will be the [250]next number?

The Clerk: Exhibit 38.

Mr. Arndt: As Exhibit 38, I offer a lease dated July 31, 1940, and one dated December 31, 1941, between American Crystal Sugar Company and G. K.

Evans. These are items 57 and 58 of the other document.

The Court: Did you say "leases"?

Mr. Arndt: The leases covering the property Mr. Evans farmed.

The Court: Do I understand the American Crystal Sugar Company own the land Mr. Evans worked?

Mr. Arndt: Yes, your Honor.

The Court: Is that also true of Mandeville?

Mr. Arndt: No, your Honor. In connection with Mandeville that land was originally owned outright—

The Court: In other words, as far as the record is concerned, so far as the Mandeville case is concerned, the American Crystal had no control over the land whatsoever.

Mr. Arndt: We say save such as might be set forth in the contract for sugar. It had no interest in the land itself, save and except crop mortgages it received.

The Court: Well, that is incidental.

Mr. Arndt: Yes. Well, it might be incidental to the title, but it was not incidental to the fact that Mandeville and Zuckerman couldn't— [251]

The Court: I know. The Sugar Company may have financed them, but that has nothing to do with this lawsuit.

Mr. Arndt: Well, it does if the defense of *pari delicto* is seriously urged. It has in this respect, that in 1938, the crop year, before there was any conspiracy, Mandeville Island gave a crop chattel mortgage to the Sugar Company. They were flooded out that

year, and from then on they were indebted under crop mortgages. This original crop mortgage applied to all future crops until they were paid off. So they were not a free agent and, without paying off Crystal this back crop mortgage, they couldn't deal with anybody else, because they had a crop mortgage on and a chattel mortgage, too. For that purpose, we weren't free. That is the only purpose those crop chattel mortgages cover in the case.

But insofar as Crystal is concerned, and Evans, these leases show that Evans was to pay 20 per cent of the amount of any and all conditional payments received under the Sugar Beet Act of 1937, and that would apply to the year here involved.

The Court: There were no payments under that Sugar Act, though, were there?

Mr. Arndt: Yes, your Honor, payments were made, which we will show by our next exhibit. In other words, payments were made and payments were turned over to Crystal.

The Court: I know, but that is on the accounting angle.

Mr. Arndt: No, your Honor. The Secretary of Agriculture [252] in the determination determined that any persons receiving benefits should not use a joint return. Crystal did receive it, had a contract to receive, and we will show Crystal did receive 20 per cent—

The Court: But you haven't answered my question.

Mr. Arndt: What is it?

The Court: That feature of it is a matter of ac-

counting, isn't it, rather than part of the conspiracy?

Mr. Arndt: Well, in this sense——

The Court: In other words, counsel, if you can establish damages here, and suppose there is also shown there is money under an accounting, I am not going to use that as a measuring stick for damages.

Mr. Arndt: We do not claim we are entitled to this, we ourselves are entitled under an accounting to this 20 per cent of the payment. That we do not contend. We merely contend this is one element in connection with a possible theory as to using the figures of the Secretary of Agriculture, and, second, that they continued during the third year, that is 1941, to operate under this plan, after the Secretary of Agriculture had said that it shall not be used to anyone getting the benefit payments, and they were receiving portions of the benefit payments despite that.

The Court: When you add all that up, what does it mean?

Mr. Arndt: It means two things. It means an additional [253] possible theory of damages, and it simply means a continuation of this plan after they received formal, official knowledge that it was objected to by the Department of Agriculture, the use of a joint net return with any other company.

We next offer, if the Court please, as our next exhibit, document listed as 65 in this record, Holly Sugar Corporation News Letter of November 13, 1941.

The purpose of this is to show that, as soon as the conspiracy ended, the various companies were offer-

ing bonuses to growers. The Crystal interrogatories show that they offered 50 cents a ton plus an early delivery bonus of \$1.70 and 35 cents. This is to show what Holly Sugar Corporation offered.

The Court: All right. Now, counsel, after the termination of conspiracy, the act of another member of the conspiracy is not admissible.

Mr. Arndt: We endeavor to show by this the resumption or the commencement of competition.

The Court: I know, but what somebody else did is not binding upon the American Crystal Company after the conspiracy terminated.

Mr. Works: We would object on that ground, your Honor.

The Court: I will sustain the objection.

Mr. Arndt: This was sent out while the conspiracy was still operating as to the next contract in this sense. This is dated November 13, 1941. The 1941 contracts settlement [254] did not take place until August 1942. So, on November 13, 1941, which was the date of this document, when they were seeking to sign up these growers for the 1942 contract, the growers were making deliveries yet under the 1941 contract, and the time for settlement had not as yet been reached. So that the growers and the companies were still operating under the 1941 contract at that time.

The Court: They might have still been operating under it, but they——

Mr. Arndt: They apparently decided in the future they were not operating under it.

The Court: Well, I am going to admit it, counsel. These people had, you might say, one outlet for their

beets, the American Crystal, and the question is, could they have gotten more for their beets during that period than they did get? I don't think that tends to prove or disprove anything, what some other company is going to do, but I will admit it to facilitate the movement along here. I want to see some live witnesses. That is what I am looking for.

Mr. Arndt: I have two of them here, your Honor.

The Court: Well, I am looking for them.

Mr. Arndt: That is No. 65.

The Clerk: That will be exhibit 39.

Mr. Arndt: Our next exhibit is an original agreement between American Crystal and Evans, dated August 31, 1942, [255] when their relationship ceased, and which provides that the portion of the sugar benefit payments under the Sugar Act of 1937, which had been withheld by the Government, should be paid to Crystal when and as received. That is the old 67.

The Clerk: That is Exhibit 40.

Mr. Arndt: The next is the old 68 and old 69, which are the sugar beet deliveries to American Crystal Company during August 1st to August 21st of the year 1939, and August 1st to August 21st of the year 1940.

The Court: By whom?

Mr. Arndt: By Mandeville Island Farms, Inc., in each of those years.

The Court: There isn't any dispute as to the amount of deliveries, is there?

Mr. Arndt: No. The purpose of it is this, your Honor. I will put it this way. One of our theories of

damages is that we should apply the 1942 basis of payment.

The Court: Does that cover 1942?

Mr. Arndt: No. I will explain it.

The Court: What year do those cover? Is that a part of the period of conspiracy?

Mr. Arndt: Yes, your Honor.

The Court: Isn't that admitted in the answer?

Mr. Arndt: No.

The Court: The amount of beets received? [256]

Mr. Arndt: No. I will explain this, your Honor. Under the 1942 contract, there was an early bonus payment. In order to apply that same payment to 1939 and 1940, if the court so determines it, we must know what those exact weekly deliveries were. This shows the exact weekly deliveries. Unfortunately, Crystal could not find their copies of these records, so the only thing we can do is to furnish our original records, which we got from Crystal during those particular times, showing deliveries during those three weeks, so if your Honor should agree with us, we would have the definite calculations here in the record.

The Court: Well, I might state now—and I have found it sometimes gets you in trouble to think out loud, because sometimes I have to back up, take water—I have this thought in mind, that it is hardly fair to compare conditions existing in 1942 with the years prior thereto, because of the war situation. I think that changed the whole economic picture. We know what effect that had upon economic life and the price structure.

Mr. Arndt: The price structure was frozen.

The Court: What is that?

Mr. Arndt: In most cases, the price structure was frozen.

The Court: I realize it was frozen. I don't remember the date that it was frozen.

Mr. Arndt: I will supply that information in our brief, [257] if the Court please, as to when that was.

The Court: I have that thought in mind when you are trying to compare things. For instance, there is the demand. Here you have a high demand, a great demand for a commodity. That demand would very easily exist in 1942 and it wouldn't exist in 1939.

Mr. Works: Your Honor, I can think of just one thing alone. There was no more cane sugar from either Hawaii or the Philippine Islands, and we will show beet consumption in California almost doubled in 1942.

The Court: I am making comments as we go along so, as you gentlemen try to work out your briefs, you will know some of these problems. I know it would be better if I would play poker here and keep quiet.

The Clerk: The last document is Exhibit 41.

Mr. Arndt: As the next exhibit, we offer the document listed as No. 82, transcript of proceedings on hearing on defendant's motion to quash the deposition subpoena at Denver, Colorado, on September 16, 1949, before the District Court of the United States for the District of Colorado, in connection with the fixing of attorney fees, because this was one court proceeding that did not take place before your Honor, and the only way your Honor can know what

there happened is to show the proceeding itself. So we offer this for that purpose.

Mr. Works: Isn't the time for this in your schedule? [258]

Mr. Arndt: No. I was not there. This is not shown in our schedule at all.

Mr. Works: I was not there either. This was at Denver, Colorado.

The Court: You introduce it for that purpose only?

Mr. Arndt: Yes. That is the only purpose for which I am offering it, your Honor.

The Clerk: That is Exhibit 42.

The Court: I might state that on the question of attorney fees, I am going to ask for an expression from counsel on that feature of it before the evidence is closed. In other words, I am not going to try to grab a figure from the thin air as to attorney fees that are going to be allowed. The last case I tried, I had an attorney all warmed up, thinking he was going to get a large attorney fee, and then I decided the case against him. He wouldn't speak to me for several weeks. Then he said the statute of limitations had run.

I make that explanation because I don't want you to think, from the fact that I am asking for evidence and data on the question of attorney fees, that anything is indicated. I want the information before me if I do need it.

Mr. Arndt: We next offer a document marked 85 in this list of documents, which is a Haskins & Sells

statement for Crystal's Clarksburg factory for the year 1942.

The Court: What is that? [259]

Mr. Arndt: Clarksburg, 1942. It is a Haskins & Sells Clarksburg statement for 1942.

The Court: I still don't get the first word that you use.

Mr. Arndt: It is a copy. That is our old 85.

The Clerk: That will be Exhibit 43.

Mr. Arndt: Our final one at this time is the various copies of the various crop mortgages, chattel mortgages, from Mandeville and Zuckerman to Crystal, and the final release of March 3, 1944. This is not listed on that group, but it is marked here as 86.

The Court: And they are offered for the purpose of showing the relationship between the parties?

Mr. Arndt: To show the relationship between the parties, yes, that is it.

The Clerk: That is Exhibit 44.

Mr. Arndt: I will next follow with living witnesses, if the Court please.

The Court: We will take a recess at this time until 2:00 o'clock.

(Whereupon, a recess was taken until 2:00 p.m. of the same day.) [260]

Los Angeles, California, February 23, 1950
2:00 o'clock p.m.

The Court: Proceed, gentlemen.

Mr. Arndt: If the court please, we have an additional written stipulation as to some facts which we would like to offer in evidence in the same manner as

offered previously, that is, to have the reporter copy it into the record.

The Court: Stipulation of facts?

Mr. Works: Yes, your Honor.

The Court: That will be the order.

Mr. Arndt: We offer it in evidence as we did before.

Mr. Works: We are still going on the assumption your Honor made some time ago, that there is no jury present. We think a lot of these things are immaterial but they don't do any harm and they may go in so far as we are concerned.

(The stipulation referred to is, in words and figures as follows: [261])

It is hereby stipulated as follows:

1. During the crop year 1942, Crystal paid to growers in California who signed its Clarksburg form of contract, the following amounts, in addition to the prices set forth in said contracts between Crystal and the respective growers:

(a) A "bonus" of 50c per ton for beets delivered;

(b) An "early delivery bonus" of \$1.00 per ton for beets delivered the week commencing July 27, 1942, 70c per ton for beets delivered the week commencing August 3, 1942, and 35c per ton for beets delivered the week commencing Aug. 10th, 1942.

(c) Neither of said bonuses was paid during the crop years 1939, 1940 or 1941.

2. (A.) During the 1939, 1940 and 1941 crop years, no beets were delivered to Crystal prior to August 1st.

B. During the 1939 crop year delivery of sugar beets was made by Mandeville to Crystal as follows:

(a) During the week commencing July 27th—none;

(b) During the week commencing August 3rd—none;

(c) During the week commencing August 10th—57.253 tons;

3. During the crop year 1940, deliveries of sugar beets were made by Mandeville to Crystal as follows:

(a) During the week commencing July 27th—72.682 tons; [262]

(b) During the week commencing August 3rd—1103.295 tons;

(c) During the week commencing August 10th—1746.692 tons.

4. During the 1941 crop year, no deliveries of sugar beets were made during the first three weeks of August by either Zuckerman or Evans.

5. Crystal acquired its Clarksburg plant after its predecessors, Amalgamated Sugar Company, had signed growers on its 1936 crop contract. Crystal completed performance upon these contracts. The first crop year as to which Crystal signed growers to its Clarksburg contract was 1937. The net return from Crystal's sales of sugar from the Clarksburg plant during the cropping years 1937 and 1938, as defined in the 1937 and 1938 contracts, and averaged for the 2 years, was 3.504c per pound.

6. The 1942 Clarksburg average net return of Crystal from sales of sugar, as defined in the 1942 contract, was 4.246c per pound.

7. The 1943 crop payments to growers by Crystal in the Clarksburg district was not based upon a net return basis but upon a price composed of a base payment, a support payment established by the Commodity Credit Corporation, an early delivery incentive payment [263] of 25c per ton and an incentive payment of \$1.00 per ton.

8. If the various bonuses paid during the crop year 1942 had been paid during the crop years 1939, 1940 and 1941, the resulting additional payments would have been as follows:

If the early delivery bonus of \$1.00 was paid for the week commencing July 27th, the 70c bonus for the week commencing Aug. 3rd and the 35c bonus for the week commencing August 10th, the resulting additional payments would have been as follows:

		Zuckerman		Evans
	1939	1940	1941	1941
50c bonus	11,177.8	12,715.15	7,072.35	2,200.85
\$1.00 first wk. bonus.....	none	72.68	none	none
.70c second wk. bonus.....	none	772.31	none	none
.35c third wk. bonus.....	20.04	611.34	none	none

9. If Mandeville, Zuckerman and Evans had been paid for their beets in 1939, 1940 and 1941 on the same basis as a grower would have been paid for the same amount of beets with the same sugar content, delivered in the same week, but calculated under the 1942 Crystal-Clarksburg contract, the additional payments over what was actually paid would have been as follows, if the early bonuses were paid for the weeks commencing [264] July 27th, August 3rd and August 10th, respectively:

	Contract Additional	50c Bonus	Early Del. Bonus	Total
1939 Mandeville	54,261.50	11,177.80	20.04	65,459.34
1940 Mandeville	48,459.24	12,715.15	1456.33	62,630.72
1941 Zuckerman	8,800.42	7,072.35	0	15,872.77
1941 Evans	3,192.25	2,200.85	0	5,393.10

(No No. 10.)

11. Evans delivered beets to Crystal's Clarksburg factory in 1937 and 1938. Mandeville delivered no beets to Crystal in 1937. Mandeville was under contract to deliver beets to Crystal for the cropping year 1938. The properties were planted with seed purchased from Crystal by Mandeville under the standard Clarksburg 1938 contract but the entire crop was destroyed by a flood which in February, 1938 covered Mandeville Island and as a result no beets were produced that cropping year.

12. Evans was indebted under crop and chattel mortgages to Crystal at the time he signed the 1939 contract and continued consistently indebted to Crystal thereafter until August 31, 1942, when he was indebted in the sum of \$45,952.38, which was secured by crop and chattel mortgages. At that time the parties entered into an agreement dated August 31, [265] 1942, the original of which will be offered in evidence.

13. Evans entered into leases with Crystal dated July 31, 1940 and December 31, 1941 for the farming of certain land owned by Crystal and farmed by Evans. Said land was owned by Crystal. Said leases provided for the use of said land for the growing of sugar beets. Said leases provided for rent of 20% of the price received for the beets and 20% of all payments under the Sugar Act of 1937 or any laws in

continuation or amendment thereof and 20% of any soil conservation or other benefit payments.

14. For the 1939 crop, 20% of the payments under the Sugar Act of 1937 on sugar beets grown by Evans were paid directly to Crystal. For 1940 and 1941, all of the payments were made to Evans, who paid equivalent amounts to Crystal, and Crystal in turn gave Evans credit for 80% thereof as a payment on account of the indebtedness from Evans to Crystal and took and carried 20% thereof as a portion of the rent provided to be paid under the said agreement.

15. Mandeville was indebted to Crystal when it signed its 1939 contract under crop and chattel mortgages and continued so indebted thereafter. It filed a petition for reorganization under Sec. 75 of the Federal Bankruptcy Act on March 6, 1941 in the [266] District Court of the United States in and for the Northern District of California in proceeding No. 9450. At that time it was indebted to Crystal. An offer of composition or extension was thereafter and in 1941 duly filed by Mandeville, approved by the requisite number of creditors and approved by the court and made effective. Attached hereto is a true and correct copy of Order Confirming the Composition and a true and correct copy of the Offer of Composition or extension. Said order has become final.

16. Thereafter, and on or about March 3, 1944, Crystal executed its written release of Zuckerman and Mandeville and the various mortgages and chattel mortgages thereto given, except a contract dated

January 31, 1944 for the growing and sale of sugar beets on Mandeville Island.

17. During the crop years 1939, 1940 and 1941, Crystal's Oxnard factory had certain equipment known as a "Steffens House," which used a process known as the "Steffens Process," under which molasses was processed into sugar. During said period of time Crystal's Clarksburg factory had no such equipment. In the ordinary or normal process of manufacturing sugar from sugar beets during those years, the beets were reduced to sugar and in the process molasses and [267] beet pulp were produced as by-products. In the Steffens process the molasses was processed into sugar in the Steffens House.

18. During said crop years, molasses resulting from the manufacture of sugar beets into sugar at Clarksburg was shipped by Crystal to Oxnard and put through the Steffens Process there. There was also put through the same process the molasses secured from Oxnard from the manufacture of beets into sugar by the normal process. The sugar resulting from the processing of molasses (produced from beets processed into sugar at Clarksburg and at Oxnard) through the Steffens House at Oxnard and the sugar resulting from the normal processing at Oxnard of beets produced under Oxnard contracts and beets produced under Clarksburg contracts and shipped to Oxnard, were mingled together and sold in interstate and intrastate commerce by Crystal without regard to the origin of the sugar and it was impossible to distinguish one type of sugar from the other.

19. During the same crop years, cane molasses

that resulted as a by-product of manufacture of sugar cane grown in the Hawaiian Islands, was shipped to Oxnard. Some of this molasses was extracted either in the Hawaiian Islands and shipped from there or in [268] Northern California. This molasses, together with some of the molasses that resulted from the manufacture of beets (including both beets shipped directly to Oxnard and beets shipped from Clarksburg to Oxnard), was mixed at Oxnard with pulp that resulted from the manufacture of beets into sugar by the normal process. This molasses-moistened pulp was called "molasses pulp" and was sold during said years by Crystal.

20. The beets manufactured into sugar at the Oxnard plant of Crystal during said cropping years and grown under Oxnard contracts, were grown in the following counties: Ventura, Santa Barbara, San Luis Obispo, Los Angeles, Orange, San Bernardino, Kern, Tulare, King and Fresno.

21. Crystal's net returns from sugar sold from the Oxnard factory during the years 1937, 1938 and 1942 are as follows:

1937	3.8936
1938	3.2374
1942	4.330

22. The amount of cane molasses shipped to Oxnard as above set forth, during the cropping years 1939, 1940 and 1941, was as follows: [269]

1939	5,730.28 tons;
1940	6,133.55 tons;
1941	5,359.74 tons.

In the District Court of the United States for
The Northern District of California

No. 9450

(Proceedings under Sec. 75 National
Bankruptcy Act)

In the Matter of

MANDEVILLE ISLAND FARMS, INC.,
Debtor.

ORDER CONFIRMING A COMPOSITION OR
EXTENSION PROPOSAL UNDER
SECTION 75

An application for the confirmation of the proposal offered by the debtor under Section 75 of the Bankruptcy Act having been filed in court and having been duly and regularly set for hearing and notice thereof having been duly given as by law required, and it appearing and the Court finds that the proposal has been accepted by a majority in number of creditors whose claims have been allowed, including secured creditors whose claims are to be affected by the proposal, which number represents a majority in amount of such claims; and it also appearing and the Court finds that the proposal includes an equitable and feasible method of liquidation for secured creditors whose claims are affected and of financial rehabilitation for the debtor; and that said [270] plan is for the best interests of all creditors; and that the offer and its acceptance are in good faith and have not been made or procured by any means, pre-

mises, or acts contrary to the acts of Congress relating to bankruptcy:

It is therefore hereby ordered, adjudged and decreed that the said proposal be, and it hereby is, confirmed; and

It is further ordered, adjudged and decreed that said plan is now effective and binding upon the debtor, upon all persons having an interest herein or any claim against the debtor or any of its assets or against any of the property, real or personal, referred to in the plan, including all creditors of the debtor and all shareholders of the debtor and all persons claiming to have any lien, claim, encumbrance or charge against any of the assets of the debtor or any of the property referred to in the plan, and upon all other interested persons; and

It is further ordered, that either in the event of any failure to carry out any of the terms and conditions set forth in said plan or in the event of the carrying out of said plan, the rights and remedies accorded interested parties as set forth in said plan shall be their sole rights and remedies and shall be [271] available to them as set forth in said plan and not otherwise; and

It is further ordered that this plan shall be binding upon all creditors of the debtor whether they have or have not filed consents to the plan and whether they have or have not filed claims with the Conciliation Commissioner or with this Court; and

It is further ordered that reference to the Commis-

sioner heretofore made is herewith terminated, except as to any objections that might have been filed by the debtor or some creditor to one or more claims heretofore filed in these proceedings. In the event that any such objections have been filed, then the reference to the Commissioner is herewith limited to the adjudicating of any and all such objections and such reference shall terminate upon the filing by said Commissioner of his written findings regarding the last such objections.

Dated: This 23rd day of June, 1941.

MARTIN I. WELSH,
United States District Judge

Approved as to form:

STANLEY ARNDT & NAT BROWN

By STANLEY ARNDT

Attorney for Debtor

WALTER SEVERSON

Attorney for The Anglo California National Bank of
San Francisco

DOWNEY BRANT & SEYMOUR,

Attorney for American Crystal Sugar Company.

In the District Court of the United States in and
for the Northern District of California,
Northern Division

Civil Action—File No. 9450

(Proceedings under Sec. 75 National
Bankruptcy Act)

In the Matter of

MANDEVILLE ISLAND FARMS, INC.,
Debtor.

OFFER OF COMPOSITION OR EXTENSION
To the Creditors and Shareholders of Mandeville
Island Farms, Inc., Debtor:

The undersigned Debtor, who has filed its petition
and schedules under Section 75 of the Bankruptcy
Act as amended, hereby offers a composition or ex-
tension as follows:

Plan of Composition or Extension of Mandeville
Island Farms, Inc.

Preliminary Statement

This Debtor is the owner of certain real property
situated in the County of San Joaquin, State of Cali-
fornia, described as follows, to wit:

All land lying within the exterior boundaries of
“Delta Farms Reclamation District No. 2027” the
exterior boundaries of which district are described
as follows, to wit:

Commencing at the junction of the south bank of
San Joaquin River with the east bank of Old River
near the southeast corner of Section 30, Township 3

North, Range 4 East, Mount Diablo Base and Meridian; thence following the east bank of Old River upstream to its junction with the north bank of (big) Connection Slough; thence easterly along the north bank of said Slough to the junction thereof, near the north and south section line between Sections 21 and 22, in Township 2 North, Range 4 East, Mount Diablo Base and Meridian with a dredger cut running from said slough to Middle River in said Sections; thence southeasterly along the center line of said dredger cut to the westerly bank of Middle River; thence downstream along the west bank of Middle River to the junction thereof with the southerly bank of San Joaquin River; thence downstream along said bank in a northwesterly direction to the connection thereof with the east bank of Old River and the point of commencement.

Except the following:

Those certain six parcels of land conveyed by Empire Navigation Company, a corporation, to City of Stockton, a municipal corporation, by deed dated May 19, 1930 and recorded May 28, 1930 in Book of Official Records, Vol. 316, page 25, which said parcels contained in the aggregate 213.75 acres, more or less.

The Debtor also is the owner of interests in personal property which are the subject of various conditional sale agreements and chattel mortgages. It is difficult, if not impossible, accurately to estimate the present fair value of the land and equipment. The Debtor owes taxes in the sum of approximately

\$5,602.40, owes its secured creditors approximately \$1,099,265.32, and owes its unsecured creditors approximately \$130,585.87. It is believed that the foregoing obligations materially exceed the value of the Debtor's assets.

The records of the County Recorder of the County of San Joaquin show the following deeds of trust affecting said property:

(a) Deed of trust from the Debtor to American Trust Company, a corporation, trustee for Disaster Loan, dated Dec. 31, 1938, recorded Jan. 5, 1939, in Vol. 590 Official Records, p. 147.

(b) Deed of trust from Debtor to Security Title Insurance and Guarantee Company, a corporation, Trustee for Empire Farms, dated March 14, 1938, recorded May 26, 1938, in Vol. 610 Official Records, p. 54. The beneficial interest in said deed of trust was assigned to Anglo Bank by instrument dated June 6, 1938, recorded June 13, 1938, in Vol. 614 Official Records, p. 269. By instrument dated Dec. 31, 1938, recorded Jan. 5, 1939, in Vol. 630 Official Records, p. 461, the lien of said deed of trust was made subordinate to the deed of trust to Disaster Loan Corporation.

(c) Deed of trust from Debtor to The Anglo Safe Deposit Company, trustee for Empire, dated July 15, 1940, recorded July 26, 1940 in Vol. 675 Official Records, p. 284. By instrument dated July 31, 1940, recorded September 11, 1940, in Vol. 707 Official Records, p. 155, the beneficial interest in said deed of trust was assigned to the Anglo Bank.

The Official Records of the County Recorder's office of San Joaquin County show various crop mortgages, subordination agreements, non-disturbance agreements and other agreements in favor of or for the benefit of Crystal. These are as follows:

Date and description of document	Executed by	Date recorded and recordation data
(a) Crop mortgage, dated April 1, 1938	Debtor	May 26, 1938, Vol. 620, p. 96
(b) Subordination agreement	Empire	Jan. 24, 1939, Vol. 612, p. 410
(c) Crop mortgage, dated Jan. 5, 1939	Debtor	Jan. 24, 1939, Vol. 642 Of. Rec. p. 12
(d) Crop mortgage, dated Sept. 15, 1939	Debtor	Oct. 4, 1939, Vol. 660 Of. Rec. p. 279
(e) Crop mortgage, dated Jan. 1, 1940	Debtor	Feb. 10, 1940, Vol. 679 Of. Rec. p. 157
(f) Subordination agreement, dated Feb. 5, 1940	Stockton Sav. & L. Bank	Feb. 10, 1940, Vol. 671 Of. Rec. p. 470
	Pacific Guano	
	Anglo Bank	
(g) Non-disturbance agreement, dated Feb. 5, 1940	Empire	Feb. 10, 1940, Vol. 676 Of. Rec. p. 261
	Anglo Bank	
(h) Crop mortgage, dated Apr. 15, 1940	Debtor	April 23, 1940, Vol. 690 Of. Rec. p. 209
(i) Agreement, dated Jan. 27, 1940	Empire	Feb. 10, 1940, Vol. 676 Of. Rec. p. 263
(j) Subordination agreement, dated April 15, 1940	Anglo Bank	April 23, 1940, Vol. 689 Of. Rec. p. 184
(k) Subordination agreement, April 16, 1940	Stockton Savings and Loan Bank	April 23, 1940, Vol. 659 Of. Rec. p. 387
	Pacific Guano	
(l) Subordination agreement, April 15, 1940	Anglo Bank	April 23, 1940, Vol. 695 Of. Rec. p. 80
(m) Non-disturbance agreement, Apr. 15, 1940	Empire	April 23, 1940, Vol. 689 Of. Rec. p. 186
	Empire	
(n) Agreement dated Apr. 15, 1940	Empire	Apr. 23, 1940, Vol. 682 Of. Rec. p. 315

The Official Records of the County Recorder's office of San Joaquin County show the following crop mortgages executed by Debtor to Anglo Bank:

Date of Crop Mortgage	Date of Recordation	Recordation Data
(a) Feb. 1, 1939	Feb. 6, 1939	Vol. 610 Of. Rec. p. 378
(b) Oct. 26, 1939	Oct. 26, 1939	Vol. 673 Of. Rec. p. 52
(To Anglo and others)		
(c) Jan. 18, 1940	Feb. 10, 1940	Vol. 673 Of. Rec. p. 436
(d) Jan. 18, 1940	Feb. 10, 1940	Vol. 679 Of. Rec. p. 160
(e) Jan. 18, 1940	Feb. 10, 1940	Vol. 673 Of. Rec. p. 439

The Official Records of the County Recorder's office of San Joaquin County show the following crop mortgages executed by Debtor to Stockton Savings and Loan Bank:

Date of Crop Mortgage	Date of Recordation	Recordation Data
(a) Feb. 1, 1939	Feb. 6, 1939	Vol. 641 Of. Rec. p. 87
(b) Jan. 18, 1940	Feb. 10, 1940	Vol. 686 Of. Rec. p. 11

The Official Records of the County Recorder's office of San Joaquin County show the following crop mortgages executed by Debtor to Pacific Guano:

Date of Crop Mortgage	Date of Recordation	Recordation Data
(a) Feb. 1, 1939	Feb. 6, 1939	Vol. 642 Of. Rec. p. 55
(b) Jan. 18, 1940	Feb. 10, 1940	Vol. 676 Of. Rec. p. 266

All creditors and stockholders of the Debtor will be affected by the plan. Without necessarily suggesting classification for purposes of voting upon this plan, they may be grouped as follows:

- (1) Claimants for taxes;
- (2) Creditors secured by deeds of trust (Disaster Loan Corporation; The Anglo California National Bank of San Francisco);
- (3) Holders of conditional sale contracts and chat-

tel mortgages covering equipment used by the Debtor;

(4) Holders of crop mortgages upon present or future crops of the Debtor (American Crystal Sugar Corporation, The Anglo California National Bank of San Francisco, Pacific Guano Company and Stockton Savings and Loan Bank);

(5) Unsecured creditors;

(6) Shareholders.

Article I.

Definitions

Unless the context otherwise requires, the following terms used in this plan shall have the following meanings:

“Anglo” means The Anglo California National Bank of San Francisco, a national banking association, and a creditor of this Debtor.

“Chattel Mortgage” means mortgage on personal property other than crops.

“Commissioner” means the Conciliation Commissioner to whom the proceedings were referred by the Court.

“Court” means the Court in these proceedings, the United States District Court for the Northern District of California.

“Crystal” means American Crystal Sugar company, a corporation which is a creditor of the Debtor.

“Debtor” means Mandeville Island Farms, Inc., a corporation which has filed a petition herein stating that it desires to effect a plan of composition or extension.

“Disaster Loan” means Disaster Loan Corporation, a United States Government agency and a creditor of this Debtor.

“Equipment” means all personal property in which the Debtor has an interest.

“Judge” means the Judge of this Court.

“Lease” means the Lease and Agreement to be executed by Anglo and others as in this plan provided.

“Net proceeds” means gross returns from sale of crops after repayment of any advances for financing them, minimum rent or crop share rent, payments on balance of 1940 financing (applicable only to 1941 crops), and \$750.00 per month to Zuckerman, less costs of planting, cultivating and harvesting such crops not financed under any crop mortgage thereon and less income and franchise taxes upon the net income of Zuckerman and the Debtor from the operation of the property.

“Pacific Guano” means Pacific Guano Company, a corporation which is a creditor of this Debtor.

“Section 75” means Section 75 of the Act of Congress of July 1, 1898, entitled “An Act to Establish a Uniform System of Bankruptcy throughout the United States,” as amended.

“Stockton” means Stockton Savings and Loan Bank, a corporation which is a creditor of this Debtor.

“The property” means the real property hereinabove described and commonly known as Mandeville Island.

“These proceedings” means the proceedings pending herein under Section 75.

“Zuckerman” means Roscoe Zuckerman, the president and sole stockholder of the Debtor.

Article II.

Transfer of Properties and Release of Liens

All persons who are the owners of any liens or encumbrances of record upon the property and all persons who are parties to agreements of record affecting the property will release, reconvey and extinguish all of such liens, encumbrances, agreements and rights, with the following exceptions:

- (a) Any liens for taxes;
- (b) Any rights of way or easements of record;
- (c) Any rights of record of Delta Farms Reclamation District No. 2027;
- (d) Any rights of record of Sacramento-San Joaquin Drainage District;
- (e) Any rights of record of Bishop Oil Company under a certain oil and gas lease executed on July 2, 1936 by Empire Farms, Inc.;
- (f) Any rights of the parties to that certain action now pending in the Superior Court of the State of California, in and for the County of San Joaquin, entitled “Empire Navigation Co., a corporation, et al., Plaintiff, vs. Harry C. Adams, et al., Defendants”, numbered 24804 in the records of said Court;
- (g) Any rights of Disaster Loan under that certain deed of trust dated December 31, 1938 and recorded in Volume 590 of Official Records, page 147, San Joaquin County Records;

(h) All rights of the parties to that certain action entitled "Ernest H. Denicke, plaintiffs vs. Anglo California National Bank, defendant" now pending in the District Court of the United States for the Northern District of California, Southern Division, and numbered 21033(S) in the records of said Court;

(i) Any rights of Crystal under a certain chattel mortgage upon six trucks used by the Debtor.

(j) Any rights of Crystal under that certain crop mortgage to it covering 1940 crops raised upon the property and any rights of Crystal under a certain assignment from Mandeville of the sugar beet allotment elsewhere herein described.

All of said liens and other rights, with the exceptions above noted, having been released and reconveyed of record, it is proposed that this Debtor convey the property to Anglo by deed. It is further proposed that Anglo will acquire clear title to any equipment as to which it holds title under any conditional sale contracts or any lien under any chattel mortgage by bill of sale from the Debtor.

The effect of these transactions if consummated will be that the Anglo, which now holds various deeds of trust, crop mortgages, chattel mortgage and conditional sales contracts, will acquire title to the real property and to certain of the equipment now subject to chattel mortgage (including that subject to said chattel mortgage under the after-acquired clause therein contained) or conditional sale contracts in its favor free and clear of any encumbrances of other creditors and free and clear of any claim of this Debtor. When these purposes have been accom-

plished Anglo will enter into a lease with Roscoe Zuckerman, individually, covering the property and equipment so acquired by it.

The following persons, holding conditional sales agreements covering personal property used by the Debtor, shall retain all their present rights therein:

Wm. C. & Henry J. Colberg (one oil screw boat, official No. 221496, inland freight, net tonnage 92 tons, known as "M/V Mandeville").

International Harvester Co. (T. D. 40 Tractor, Farmoll Tractors).

Martini & Arrighi (one grain harvester).

Moore Equipment Co. (one AC tractor).

Pacific Gas & Electric Co. (electric water heaters).

Morthrift Company of America and Morthrift Finance Co. (a harvester).

Morthrift Finance Co. and Morthrift Company of America (a bull-dozer).

Julius Harning and Horning Implement Co. (covering scrapers).

Channel Shop (lien for laborer's and mechanic's services and parts and materials furnished to and on personal property, consisting of farm machinery, equipment and tools pursuant to the provisions of Section 3051 et seq. of the Civil Code of the State of California.

Article III.

Lease and Option to Purchase

It is proposed that the Debtor, Zuckerman, Anglo, Crystal, Pacific Guano and Stockton will join in granting to Zuckerman a lease and option to buy the property and certain equipment, a copy of which

is hereunto attached, marked "Exhibit A", and is hereby made a part of this plan.

Article IV.

Effect of Plan on Creditors and Shareholders

This plan will affect the creditors and shareholders of the Debtor as follows:

(1) Tax claimants.

The Anglo will pay forthwith all delinquent and current taxes upon the property and any equipment acquired by it hereunder.

(2) Holders of deeds of trust.

Disaster Loan will retain its first deed of trust upon the property and all existing stand-by agreements and so long as the lease is in good standing Anglo will protect the parties to this plan from the termination of the lease due to any foreclosure of or sale under said deed of trust. If the lease is performed Anglo will receive \$462,000.00 as the purchase price of the property and any equipment acquired by it hereunder. The minimum rental will provide a sum of not to exceed \$7,000.00 for levee repair per year, taxes and insurance and \$12,000.00.

(3) Holders of conditional sale contracts and chattel mortgages.

(a) The rights of those persons, other than Anglo, holding conditional sales agreements or chattel mortgages covering personal property are to stay as they are. Zuckerman shall have the right to turn back to each such person the property that is the subject of his conditional sales agreement provided he se-

cures the release of the Debtor of all claims under such contract, or he may make a new individual contract with such contract holder provided he secures the release of the Debtor. If any conditional sales creditor will not do either of these things, then his security shall be valued and shall be allowed as an unsecured claim for any deficiency above the value of the lien so found.

(b) As to any personal property acquired by Anglo, the performance of the lease and agreement above described will result in Anglo's receiving \$62,000.00, the approximate present value of that property, as a part of the total purchase price of \$462,000.00.

(4) Holders of crop mortgages.

All crop mortgages now in existence, except the crop mortgages held by Crystal on 1940 crops and the sugar beet allotment for 1940, will be released and the only new crop mortgages which will be placed against the property will be in favor of persons providing annual financing of the crops.

As to the indebtedness owed to Crystal on account of crop financing for 1940 and prior years, Crystal will receive as credits on account of such indebtedness, including the interest thereon, the following: (1) all of the remaining 1940 potato crop and its proceeds now or hereafter received (including the dug but unsold potatoes and that portion of the crop still in the ground and which it is anticipated will be harvested during the Spring of 1941); (2) all additional proceeds from the 1940 crop of sugar beets; (3) the moneys now on deposit in the registry

of this court in the sum of \$40,452.28, being the proceeds of the payment by the Secretary of Agriculture under the Sugar Act of 1937 on account of the 1940 crop of sugar beets grown by said Debtor; and (4) after repayment of all moneys advanced by Crystal or others, together with the interest thereon, for the financing of the 1941 crops and after payment to Anglo of the sum of \$6200.00 Crystal shall receive all further proceeds of said 1941 crops of sugar beets, onions and potatoes until said existing indebtedness due and owing to Crystal has been paid in full with the interest thereon. After such payments and the payment of the crop share rental or minimum rental to Anglo and the payment of \$750.00 a month to Zuckerman for each month during each crop year while the lease is in effect, Anglo, Pacific Guano and Stockton will share pro rata in $\frac{2}{3}$ of 50% of any net proceeds of such crop (see definition of "net proceeds" above).

(5) Unsecured creditors.

The unsecured creditors, exclusive of Anglo, will receive pro rata $\frac{1}{3}$ of 50% of the net proceeds of each year's crops (see definition of "net proceeds" above). If by the time Anglo and Crystal have been paid in full the unsecured creditors have not been paid in full, 50% of all net proceeds of crops will be paid to such creditors pro rata until they are paid in full. The other 50% will be used to continue the current operating fund hereinafter described.

(6) Shareholders.

The shareholders will receive nothing as such.

Article V.

Annual Crop Financing

Crystal has advanced to Mandeville or Zuckerman certain money for current crop financing for 1941 and expects to advance sufficient further funds to enable Zuckerman to plant, cultivate, harvest and sell approximately 975 acres of sugar beets, 300 acres of potatoes and 93 acres of onions, under budgets in amounts already agreed upon between Anglo, Crystal and Zuckerman.

If Zuckerman desires to plant corn in 1941 and requires financing therefor, such financing will be obtained from some person other than Crystal and the repayment of all advances for that purpose shall be secured by a first crop mortgage upon such corn crop. Anglo will subordinate its rights in such crop in favor of the person making such advances and to the extent thereof, but after repayment of such advances from the proceeds of such crop, Anglo shall receive its crop share rent therefrom and any other proceeds or net proceeds thereof shall be distributed as herein and in the lease generally provided with reference to proceeds and net proceeds of crops.

Loans made by Crystal for 1941 financing of sugar beet, potato and onion crops shall be evidenced by notes executed by Zuckerman to Crystal and said indebtedness together with any and all indebtedness for 1940 and prior crop financing shall be secured by (1) a crop mortgage which shall constitute a first and prior lien covering all crops of sugar beets, potatoes and onions grown upon said real property during 1941; (2) by the assignment and pledge of

any and all payments from the United States or any of its agencies under the Sugar Act of 1937, or any amendatory, supplemental, substitute or corresponding legislation or any State or Federal legislation of similar import, on account of the production of said 1941 crop of sugar beets; and (3) by chattel mortgage covering the items of equipment now covered by that certain mortgage dated May 1, 1940, by and between said Debtor as mortgagor and said Sugar Company as mortgagee, and which was recorded on July 1, 1940, in Vol. 698 of Official Records at Page 158, San Joaquin County Records; and it is understood that a full time timekeeper satisfactory to Sugar Company shall be employed by Zuckerman whose duties shall include the allocation of charges between the several crops and weekly reports thereof and of the farming activities of the previous week to the Sugar Company. Anglo will subordinate all its rights and liens in or upon said 1941 crops of sugar beets, potatoes and onions to the rights and lien of Crystal to secure such payment of said 1941 advances.

Annually after 1941, crop financing may be obtained and repayment of its secured in like manner from Crystal or others except that no provision shall be made as to crops raised in 1942 or subsequent years for payment from the proceeds thereof on account of any balance due Crystal for crop financing in 1940 or any prior year.

After payment from the gross proceeds of any year's crop of (1) advances for financing such crops, with interest; (2) \$6200.00 to Anglo; (3) as to 1941 crops only, the balance due Crystal for crop financ-

ing in 1940 and prior years, with interest at 6 per cent per annum; (4) rental reserved to Anglo; (5) \$750.00 per month to Zuckerman as in the lease provided; net proceeds remaining shall be determined in accordance with the definition thereof herein contained and 50% thereof paid to or retained by Zuckerman to be used by him to keep the lease in good standing or to pay any sums he may see fit under and pursuant to said lease or the option to purchase therein contained, to pay any of the Debtor's franchise and Zuckerman's income taxes on net taxable income from operation of the property and costs of maintenance of levees and drainage and of planting, cultivating, harvesting or marketing crops from the property or of obtaining equipment needed for operations thereon not otherwise paid or provided for.

Article VI.

Cash on Hand

After such provision as shall be made by the Court for the payment of fees and expenses of the Commissioner, all cash now deposited with the Court, representing the government sugar beet allotment for 1940, and any cash in the hands of the Conciliation Commissioner in the proceedings which was derived from sale of any 1940 crops, shall be paid to Crystal. All other unexpended cash advanced by Crystal in the possession of such Commissioner shall be paid to Zuckerman.

Article VII.

Means of Accepting the Plan

The creditors shall approve of the plan by execut-

ing and forwarding to Carl Knudsen, Conciliation Commissioner, at Stockton, California, the formal approval attached hereto.

Article VIII.

Effect of Confirmation of This Plan

Upon the filing with the Commissioner of the approval of this plan by a majority in number and amount of the creditors filing claims in these proceedings, and the confirmation of the plan by this court, this plan shall immediately become effective and binding upon the Debtor and all persons and corporations having an interest herein whether as creditors or shareholders. It is understood that the plan will, by such confirmation, be approved as a fair and equitable solution of the Debtor's affairs under the proceedings herein taken, and after the date of such confirmation the rights of all interested persons shall be solely as set forth in this plan. In the event of any failure to carry out any of the terms and conditions herein agreed to be performed and observed, the rights and remedies accorded interested parties under such circumstances by this plan shall be their sole rights and remedies and shall be available to them without further delay.

Immediately upon such confirmation the reference to the Commissioner shall terminate, unless prior to the date of confirmation objections shall have been filed by the Debtor or some creditor to one or more claims theretofore filed in the proceedings. In the latter event such reference shall terminate upon the filing by the Commissioner with the Court

of his written findings regarding the last of such objections.

Article IX.

Means of Effecting the Plan

Each of the persons interested in the affairs of the Debtor will execute any and all documents and pleadings reasonably necessary to effectuate the purposes of the plan, including any and all releases and reconveyances, deeds and bills of sale, crop mortgages, chattel mortgages, agreements of lease and option, releases of claim, subordinations and stipulations for withdrawal of funds, and the Court shall have jurisdiction to order any of these things to be done upon the application of any person interested in these proceedings.

Dated: May 7, 1941.

Respectfully submitted,

MANDEVILLE ISLAND FARMS, INC.

/s/ By R. C. ZUCKERMAN,

President.

EXHIBIT A

Lease and Agreement

This Agreement, entered into as of January 1, 1941, between The Anglo California National Bank of San Francisco, hereinafter called "Anglo", Roscoe Zuckerman, hereinafter called "Zuckerman", Mandeville Island Farms, Inc., hereinafter called "Mandeville", American Crystal Sugar Company, hereinafter called "Crystal", Pacific Guano Company, hereinafter called "Pacific", and Stockton Savings and Loan Bank, hereinafter called "Stockton";

Exhibit A—(Continued)

Witnesseth:

(1) The parties hereto do hereby severally release, remise and forever quitclaim to Anglo, its successors and assigns, all rights, titles, interests, deeds of trust, mortgages, crop mortgages and liens of every kind, nature and description, which they may respectively have or claim against any real property now standing in the name of Mandeville or any crops now or hereafter grown thereon, (except crop mortgage to Crystal dated April 15, 1940 recorded 690 O. R. 209) and particularly in or to the following described real property:

All of that certain real property situated in the County of San Joaquin, State of California, described as follows, to wit:

All land lying within the exterior boundaries of "Delta Farms Reclamation District No. 2027" the exterior boundaries of which district are described as follows, to wit:

Commencing at the junction of the south bank of San Joaquin River with the east bank of Old River near the southeast corner of Section 30, Township 3 North, Range 4 East, Mount Diablo Base and Meridian; thence following the east bank of Old River upstream to its junction with the north bank of (big) Connection Slough; thence easterly along the north bank of said Slough to the junction thereof, near the north and south section line between Sections 21 and 22 in Township 2 North, Range 4 East, Mount Diablo Base and Meridian with a dredger cut running from said slough to Middle River in said Sections; thence

Exhibit A—(Continued)

southeasterly along the center line of said dredger cut to the westerly bank of Middle River; thence downstream along the west bank of Middle River to the junction thereof with the southerly bank of San Joaquin River; thence downstream along said bank in a northwesterly direction to the connection thereof with the east bank of Old River and the point of commencement.

Except the following:

Those certain six parcels of land conveyed by Empire Navigation Company, a corporation, to City of Stockton, a municipal corporation, by deed dated May 19, 1930 and recorded May 28, 1930 in Book of Official Records, Vol. 316, page 25, which said parcels contained in the aggregate 213.75 acres, more or less.

Each such party hereby covenants upon demand of Anglo to execute, acknowledge, deliver and record any and all deeds, releases or other documents reasonably required by Anglo fully to effectuate the provisions hereof. The foregoing provisions are, however, expressly made subject to the other terms, covenants and conditions hereinafter contained.

(2) Mandeville and Zuckerman hereby jointly and severally sell, assign, transfer and set over to Anglo all that certain personal property described in a schedule hereunto attached, marked "Exhibit A", and hereby made a part hereof, (which said property shall include all property now subject to any chattel mortgage or conditional sale agreements

Exhibit A—(Continued)

executed between Mandeville or Zuckerman and Anglo) and Mandeville and Zuckerman agree that they will execute and deliver any and all bills of sale thereto which Anglo may reasonably require to vest clear title to said property in Anglo subject to this agreement.

(3) If and when, Anglo acquires clear title to the aforesaid personal property, and clear title to the aforesaid real property subject only to liens for taxes, easements and rights of way of record, rights of record of Delta Farms Reclamation District No. 2027 and Sacramento-San Joaquin Drainage District, any rights of Disaster Loan Corporation under deed of trust dated December 31, 1938, any rights of record of Bishop Oil Co. under an oil and gas lease dated July 2, 1936, and any rights of the respective parties to *Empire Navigation Co. v. Adams* (Superior Court, San Joaquin County, No. 24804) or *Denicke v. Anglo California National Bank* (U. S. District Court, Northern District of California, No. 21033-S), any rights of record of Crystal under any crop mortgage covering 1940 crops, and any assignment of the sugar beet allotment of 1940, then and in that event and as of the date of final acquisition of such titles Anglo hereby leases to Zuckerman all of said real and personal property for a term of twelve (12) years, ending December 31, 1953, upon the terms, covenants and conditions hereinafter contained.

Exhibit A—(Continued)

(4) Zuckerman will pay to Anglo and Anglo reserves to itself as rent for said property the following sums of money and things of value:

(a) Twenty per cent (20%) of the sugar beets, fifteen per cent (15%) of the potatoes and onions, and twenty-five per cent (25%) of the corn, grain or beans raised and fifteen per cent (15%) of the peat sold each year upon or from the land above described during the life of this agreement. If any such crop share rent is sold the buyer thereof shall pay to Anglo directly the proceeds thereof.

(b) An additional sum by which \$27,200.00 as minimum rent for said real property plus \$6,200.00 as minimum rent for said personal property exceeds the proceeds of the crop share rental for the year 1941, as hereinabove provided;

(c) An additional sum by which \$36,000.00, as minimum rent for said real property, plus \$6,200.00 as minimum rent for said personal property, exceeds the proceeds of the crop share rental hereinabove described, for each year beginning January 1, 1942 and ending December 31, 1953.

(d) An additional sum of \$75,000.00 payable on or before December 31, 1943, and a further sum of \$25,000.00 per annum, payable upon December 31st of each year, beginning December 31, 1944, and ending December 31, 1953; provided, however, that of the sums payable under subparagraphs (a), (b) and (c) of this Paragraph 4, hereinabove set forth, there

Exhibit A—(Continued)

shall be credited to the payments required under this subdivision (d) hereof the following:

(1) All sums by which the proceeds of the crop share rental exceeds the minimum rental described in subparagraphs (b) or (c) above.

(2) Seventy per cent (70%) of each minimum payment of \$6,200.00 required above.

(3) \$8,800.00 out of each minimum payment of \$36,000.00 described above.

(4) Any additional rent paid to Anglo under the provisions of Paragraph 14 hereof.

In the event of the exercise of the options hereinafter granted to purchase the aforesaid real and personal property, or to purchase the personal property only, any sums paid under this sub-paragraph (d) shall first be applied to the purchase price of the personal property until such price is paid in full, and then to the purchase price of the real property.

(5) All annual payments required of Zuckerman hereunder shall be made on December 31st of each year beginning December 31, 1941. The proceeds of crops raised upon the property described above and of Anglo's share thereof shall be determined in the first instance by the estimate of Crystal, or such other person as may have financed the planting and harvesting of the particular crop, such estimates to be made on or before December 31st of each year. Such determination shall fix the obligation of Zuckerman to pay any deficiency between the crop share rental

Exhibit A—(Continued)

hereunder and any minimum requirements applicable to the year involved, subject, however, to adjustment upon a final determination of the proceeds of such crops when the sale thereof has been completed. Any payment made or to be made under the Sugar Act of 1937 or any amendatory, supplemental, substitute or corresponding legislation or any State or Federal legislation of similar import will be estimated in like manner and shall be treated hereunder as if such payment constituted the proceeds from crops raised upon said property. All soil conservation payments shall go to Zuckerman.

(6) Anglo grants to Zuckerman the option to purchase the real and personal property hereinabove described either together or separately at any time on or before December 31, 1953 and while Zuckerman is not in default in the performance of this agreement or of any term, covenant or condition herein contained on his part to be performed, upon the following terms and conditions: The price of the land shall be \$400,000.00 and the price of the personal property shall be \$62,000.00, but upon exercise of the option there shall be credited against such price the amount of money theretofore paid by Zuckerman to Anglo under the provisions of subparagraph (d) of Paragraph 4 of this agreement. If either alone or in conjunction with the purchase of the real property the option to purchase the personal property is exercised, then such credits shall first be applied to the purchase of the personal property until it is paid in full. Zuckerman may exercise

Exhibit A—(Continued)

any such option by giving thirty days prior written notice thereof to Anglo and by depositing within such thirty day period with Anglo or the escrow holder hereinafter mentioned a sum of money equal to the difference between the credits against the purchase price of the property to be purchased and the total purchase price of such property. Taxes and minimum rentals shall be prorated as of the date of payment of the balance of the purchase price.

(7) If and when the said Zuckerman gives said notice of exercise of any of the aforesaid options, Anglo shall deposit with any bank or title company as escrow holder satisfactory to Zuckerman a deed and/or bill of sale conveying and transferring to Zuckerman the real and/or personal property to be so purchased free and clear in each instance of all encumbrances, except those existing at the time title to the same was acquired by the Anglo hereunder (other than property taxes and the aforesaid deed of trust to Disaster Loan Corporation), and except other liens or encumbrances placed thereon with the consent of Zuckerman, and will instruct said escrow holder to deliver said deed and/or bill of sale to Zuckerman upon payment to Anglo of the balance of said purchase price described in Paragraph 6 hereof. It is understood, however, that Anglo shall not be required to furnish any policy of title insurance upon any such property and shall have no responsibility whatsoever in connection with the exercise of any such option or the transfer of any such property for the then condition of any real or per-

Exhibit A—(Continued)

sonal property involved, and particularly Anglo shall have no liability or responsibility to convey any personal property which has by then been lost, destroyed, or exhausted, nor any improvements now situated upon the real property which have by then been destroyed, worn out or removed. If the option to purchase the real property has been exercised, Anglo will further, at such time and to the extent that it is legally possible to do so, transfer, assign and set over unto Zuckerman any then existing sugar or other crop or land allotments relating to said real property, to the end that Zuckerman shall be entitled to such allotments from that time forward.

(8) It is recognized that Anglo claims that Zuckerman is obligated to it under a continuing guaranty of certain obligations of Mandeville, and as to such obligations Zuckerman waives any right that he may otherwise hereafter acquire by any future failure of Anglo to act in connection with such obligation, and Anglo agrees that upon the exercise of the option herein granted to purchase both the real and personal property above described and the conveyance by Anglo to Zuckerman or upon complete surrender by Zuckerman to Anglo of all his rights in and to the real and personal property, Anglo will release any and all claims that it may have against Zuckerman under or in connection with such alleged guaranties. Nothing herein contained shall, however, be construed to constitute a release of any other guaranties of any obligations of Mandeville that Anglo may have, nor shall anything herein contained be deemed

Exhibit A—(Continued)

to be an admission by Zuckerman of any liability under any guaranty.

(9) Anglo will out of the minimum cash rental to be received hereunder,

(a) Permit Zuckerman to use up to but not exceeding the sum of \$7,000.00 per year to repair the levees which are designed to protect the real property above described, upon the condition, however, that all work done upon such levees shall be done under the supervision and to the satisfaction of Anglo;

(b) Pay all real and personal property taxes assessed against any of the property above described which is subject to this agreement during the term hereof;

(c) Pay all cost of fire insurance upon the improvements on said real property and upon the personal property above described up to but not exceeding total annual premiums of \$1200.00, all such insurance to be effected in companies and in form satisfactory to Anglo, with loss payable to Anglo and Zuckerman as their interests may appear.

(10) Any and all proceeds of any oil or gas leases now or hereafter placed upon the real property above described shall be paid to Anglo and credited and allocated in the same manner as proceeds from the sale of crops, without being subject to any provisions herein contained relative to the subordination of the rights of Anglo to any crop mortgages.

(11) For the year 1941, and thereafter so long as

Exhibit A—(Continued)

Zuckerman shall not be in default hereunder, Anglo will subordinate all of its right, title and interest in and to any crops raised upon the real property above described and in and to any government benefit relating thereto for the following purposes and in the following manner:

(a) Annually to the extent of any money, together with interest thereon, advanced by Crystal or any other financially responsible person approved by Zuckerman which is reasonably necessary to finance such crops in such acreages as Zuckerman and the person providing such financing shall have agreed to be advisable upon the basis of estimated costs and yields furnished in connection therewith.

(b) As regards sugar beet, potato and onion crops for 1941, in favor of Crystal (after repayment of Crystal's advances for financing said crops and after payment to Anglo out of the gross proceeds of such crops of a pro rata of \$6200.00 payable out of the gross proceeds of all crops for 1941) to the extent of the unpaid balance of advances made by Crystal for financing crops upon the real property for 1940 or any prior year.

(12) Out of gross proceeds of any year's crops after 1941 Anglo shall receive, after payment of advances for financing of such crops, its crop share rent hereunder or the minimum rent whichever is larger. As to the 1941 crops Anglo shall receive, after repayment of advances for financing such crops, a pro rata of the sum of \$6200.00 payable out of all crops and its crop rent share of any corn crop, and

Exhibit A—(Continued)

then, after repayment to Crystal of the unpaid balance of its crop financing advances for 1940 and prior years, Anglo's crop share rental of sugar beets, potatoes and onions less such pro rata of \$6200.00.

(13) After the payments described in Paragraph 12 have been made, the net proceeds of each such crop shall be determined by deducting from any remaining gross proceeds costs of planting, cultivating and harvesting such crops not obtained by advances under any crop mortgage herein provided for, \$750.00 per month to be paid to Zuckerman for each month during the particular crop year involved during which this lease was in good standing, and Federal and State income taxes payable by Mandeville or Zuckerman upon taxable net income obtained by them or either of them from the operation of the property during such year and such net proceeds shall be paid and applied as follows:

(a) Fifty per cent (50%) thereof to Zuckerman to be used as a special fund for operations and working capital in paying corporate franchise and other taxes of Mandeville, meeting any payments required hereunder in order to keep this agreement in full force and effect, or any payments whatever to Anglo permitted or required hereunder, or in paying any costs of maintenance of levees and drainage of land, planting, cultivating, harvesting or marketing crops grown upon the real property above described or in purchasing necessary equipment for the operating of such property, provided such expenditures are consistent with the efficient, economical and accepted

Exhibit A—(Continued)

farming methods in the locality of Mandeville Island;

(b) Two-thirds of the other fifty per cent (50%) of such net proceeds to Stockton to be paid by it: 13/140ths to Pacific Guano, 27/140ths to Stockton and 100/140ths to Anglo until said parties have respectively received \$13,000.00, \$27,000.00 and \$100,000.00;

(c) One-third of such other fifty per cent (50%) to Carl Knudsen of Stockton, California as an individual disbursing agent for the unsecured creditors of Mandeville and not in any official capacity either as Conciliation Commissioner, Referee, Special Master or otherwise, to be paid by him by check signed by himself and Zuckerman, after deducting his reasonable costs, expenses and compensation, to the unsecured creditors of Mandeville, excluding Anglo, prorata, until said creditors have been paid the amount of their allowed claims in full.

(14) After the claims of the persons described in subdivisions (b) and/or (c) of the next preceding paragraph of this agreement have been fully paid, the net proceeds theretofore allocated to claims so paid shall be paid to Anglo as additional rent hereunder, provided that in the event of the exercise of the option hereinabove granted, such additional payments shall constitute a credit against the purchase price of any property purchased hereunder, first credit to be against the purchase price of the per-

Exhibit A—(Continued)

sonal property if the option to purchase it is exercised.

(15) For the further protection of Anglo in the event that Zuckerman should fail fully to perform it, Zuckerman will forthwith upon the execution hereof pledge to Anglo as security for the performance hereof all of the issued and outstanding capital stock of Mandeville under an agreement in form satisfactory to Anglo.

(16) Zuckerman will operate and use the property as a farm in the manner herein set forth, and for no other purpose and in no other manner. Zuckerman agrees in due and proper season and in accordance with the best standards of farming in the community in which the real property is located, to do all things necessary or customary in the conduct of such operations, including, without limiting the generality of the foregoing, proper plowing, cultivating, preparation for planting, planting, replanting when necessary, spraying, dusting, draining, irrigating, pruning, harvesting, processing, curing, drying, preparing for market and summer fallowing (fertilizing to be done entirely at Zuckerman's option). Zuckerman agrees, to the extent that it is the customary practice in such locality and only to such extent: specifically to exercise diligence to keep the property free from foul or injurious plants or weeds and to exterminate rodents and other animal pests; to sow no foul seed on the property, or any part thereof. Anglo may inspect all seed proposed to be

Exhibit A—(Continued)

sown or planted prior to the planting and if any such seed is rejected by Anglo on reasonable grounds Zuckerman will procure proper seed. Zuckerman will use such approved methods as may be customary for the effective checking and elimination of any blight, disease, or insect infestation which appears in any growing crop.

Except as herein otherwise specifically provided, all acts to be performed by Zuckerman shall be performed at his own cost and expense, and he shall furnish at his own cost and expense all labor, seed, material, tools, machinery, equipment, sacks, containers, wagons, trucks, and all other things used in connection with the performance of said acts.

The crop rental reserved hereunder to Anglo shall be of like kind and quality as the share retained by Zuckerman. Except as herein otherwise specifically provided, Zuckerman shall at his own cost and expense properly harvest Anglo's shares of all crops, process them, and do all other things customarily done to prepare them for market, and deliver them at the property in the customary type of container which Zuckerman shall supply. If Anglo shall take its share of any crop in kind, the fair market value thereof upon the date of delivery shall be credited against any obligation of Zuckerman hereunder to which such crop share rental is to be applied.

(17) Zuckerman shall pay when due and before delinquent, all costs of operation of the property, all charges for water for irrigation or other purposes,

Exhibit A—(Continued)

all charges for light, heat, power, and any and all public utility services used in or on the property during the term of the lease and option.

(18) Zuckerman shall not assign this lease and agreement or any interest herein or sublet the property or any part thereof, or any right or privilege appurtenant thereto, or suffer any person (the agents and servants of Zuckerman excepted) to occupy the said property or use the same or any portion thereof without the written consent of Anglo first had and obtained. A consent by Anglo to any one such assignment, sub-lease, occupation or use by another person shall not dispense with the necessity of a similar consent to any subsequent assignment, sub-lease, occupation or use. The execution, grant or permission by Zuckerman of any such assignment, sub-lease, occupation or use by another person without such written consent of Anglo shall be void and shall constitute a default hereunder and shall automatically terminate this lease and agreement.

(19) Zuckerman shall have no right or authority to mortgage, pledge, hypothecate or otherwise encumber, sell or otherwise dispose of in any manner any share of the crops growing or to be grown upon the demised premises reserved by Anglo as rental, or any part thereof, and any mortgage or other encumbrance executed by Zuckerman covering his share of crops grown or to be grown on the property shall by its terms specifically be made subject to the terms and provisions of and rights of Anglo under

Exhibit A—(Continued)

this lease and agreement. Title to any portion of the crops herein reserved by Anglo as rental shall at all times remain in Anglo.

(20) Anglo shall not be required to make any alterations, improvements or repairs whatsoever on the premises nor to repair, maintain or assume any responsibility for any levees or the consequences of any levee failure. Zuckerman hereby waives the provisions of Sections 1941 and 1942 of the Civil Code of California. Zuckerman agrees to keep the buildings, ditches, pumps, wells, fences and all other improvements except levees and all fixed equipment and machinery on the property in as good condition as they now are or may become during the term hereof, reasonable wear and tear and damage by fire or the elements excepted, at his own cost and expense. In the event that any of said objects are materially injured or substantially destroyed by fire, flood, or other cause, and such destruction is not the fault of Zuckerman or caused by his failure to perform hereunder, then Zuckerman shall not be required to repair them, but this lease shall not terminate for such reason and Anglo shall be under no obligation to make any such repairs. In this connection Zuckerman expressly waives the provisions of Sections 1932 and 1933 of the California Civil Code. The proceeds of any fire insurance shall be used to rebuild the property insured or shall be applied first to minimum rent and then to the purchase price (if

Exhibit A—(Continued)

any option hereunder has been exercised) at Anglo's election.

(21) Zuckerman shall not commit or suffer to be committed any waste on or of the said property or any crop thereon and he shall not do or suffer to be done any act on or about the said premises which will be a nuisance or which will endanger the said property.

Zuckerman shall in his operation of the property and with respect to all matters arising under this lease and agreement comply with all federal, state and local laws and regulations pertaining thereto. He shall not store anything upon the property or perform any acts thereon which would increase the existing rate of fire or other insurance thereon or suspend or render unenforceable insurance now or hereafter in effect.

(22) Zuckerman shall hold all parties hereto and those claiming through them or any of them, and the property, free and harmless of and from any and all liens, judgments and/or encumbrances created or suffered by him or resulting from any of his acts under this lease and agreement or in connection with the property, and free and harmless of and from any and all liabilities, penalties, losses, damages, costs and expenses, including expenses of litigation and counsel fees, causes of action, claims and/or judgments arising from damages, injury or death to persons or property of any kind, from any cause whatsoever connected with the occupation or operation of

Exhibit A—(Continued)

the property or the performance of the terms hereof by Zuckerman.

(23) Anglo will not be liable for the delivery of any water to the leased premises, and will not be liable for any damages to crop, stock and/or other property resulting from any cause whatsoever, including without limiting the generality of the foregoing damage from breakage of levees, overflow or seepage of or to said land or any part thereof, or any adjacent land, or from failure to drain said land.

(24) Should Zuckerman fail properly to perform any of the terms of this agreement, Anglo may, at its option, perform the same or cause the same to be performed, and the cost of so doing shall be charged against Zuckerman and shall be a lien against his interest in any crops produced, and shall be paid to Anglo on demand, with interest at seven per cent (7%) per annum, whether this lease and agreement shall have terminated by virtue of said default or not.

(25) If Anglo shall prevail in any action or suit brought by it for breach, or to restrain the breach of or to enforce any of the covenants or agreements herein contained on the part of Zuckerman to be paid, kept, or performed, or for the recovery of said property, Zuckerman will pay to Anglo the costs of any such action, including reasonable attorney fees to be fixed by the Court.

(26) Time is specifically made of the essence of this lease and agreement and of every provision hereof. The waiver by Anglo of any failure of Zuck-

Exhibit A—(Continued)

erman to perform any covenant, term or condition hereof shall not constitute a waiver of any subsequent or continuing failure, omission, or refusal on the part of Zuckerman to so perform or a waiver of any other covenant, term or condition hereof.

(27) If Zuckerman or any of his agents or employees hold over and retain possession of the property, or any part thereof, after the expiration of the term of this lease and agreement, or the sooner termination hereof, such holding over shall not be construed to be either a renewal or an extension hereof, and neither Zuckerman nor any of his agents or employees shall be entitled to retain possession of said property for an additional renewal period or for any time whatsoever.

(28) Anglo, its agents, servants and invitees shall at all times have free ingress to and egress from the property, and every part thereof, to see that the terms of this lease and agreement are being fully complied with, to exhibit the said property, and for any other lawful purpose. Anglo shall have the right to enter upon the property at any time for the purpose of constructing or altering any improvements or work thereon that it may consider necessary or advisable and to use such earth, wood, and other material provided from the property as may be desirable in such construction or alteration.

(29) All moneys due, or to become due and payable to Anglo under the terms of this lease, shall be paid to it at its office at San Francisco, California.

Exhibit A—(Continued)

Any written notice herein required or provided to be given to the Lessee shall be deemed given if mailed by registered letter addressed to Zuckerman, at 20 East Weber Street, Stockton, California.

(30) Should Zuckerman violate or neglect or omit to perform any of the terms, covenants, agreements or conditions herein contained on his part to be performed, except provisions regarding payment or delivery of any crop share or other rental or things of value or assignment or subleasing, and such default shall continue for a period of fifteen (15) days after written notice thereof from Anglo to Zuckerman, or if Zuckerman shall fail to pay or deliver the rentals and other payments herein provided for or shall attempt to assign this lease or agreement or transfer or sublease any part of the real or personal property above described contrary to the provisions hereof, or if the said Zuckerman shall file any voluntary petition in bankruptcy, or under the provision of the Federal Bankruptcy Act for the arrangement, composition or extension of any of his debts, or if the said Zuckerman shall be finally adjudicated a bankrupt upon any involuntary petition of any kind under the provisions of the Federal Bankruptcy Act, or if Zuckerman or Mandeville shall hereafter apply to any Federal Court for any relief under any provision of said Bankruptcy Act other than for approval of the composition of which this lease is a part or in connection with objections to claims, or if any attachment or execution shall be levied upon the interest of Zuckerman in any of the

Exhibit A—(Continued)

real or personal property herein described or the crops hereinabove mentioned or if any of them be sequestered or taken by any receiver appointed by any court and the lien of such attachment or execution be not removed or such sequestration or receivership be not terminated within thirty (30) days after its levy or commencement, or if Zuckerman shall make an assignment of any substantial portion of his assets for the benefit of his creditors, then and in any of such events this lease and the options herein granted shall forthwith terminate, without notice, demand or act of any party hereto. In the event of any termination hereof because of Zuckerman's default, Anglo shall have the right immediately to re-enter the said real property, and all sums theretofore paid by Zuckerman to Anglo shall be the sole and separate property of Anglo as compensation for the use and occupancy of said property from the date hereof to the time of such default, and in no event shall this agreement or any interest of Zuckerman in the land or personal property above described be treated as an asset after such termination, except as to such thereof, as to which title has been transferred to Zuckerman. Any and all of the remedies and rights of Anglo under the provisions of this paragraph shall be cumulative and shall be in addition to and in aid of any and all rights and powers available to Anglo by law.

Anglo all of the real and personal property herein described not then paid for in full, together with

Exhibit A—(Continued)

this lease, at any time after December 31, 1941. Upon such surrender Zuckerman shall not be liable for any further performance of this lease and agreement but shall be responsible to Anglo for any damage to the real or personal property due to Zuckerman's negligence while in possession thereof. All payments towards the purchase price of any property so surrendered theretofore made by Zuckerman and all rent on account thereof theretofore paid by Zuckerman shall remain the sole property of Anglo.

(32) As a material part of the consideration for the lease and option herein granted, Zuckerman and Mandeville do hereby jointly and severally fully, finally and completely release Anglo, its successors and assigns of and from all claims, demands and liabilities which the said Zuckerman or Mandeville may have ever had or now has or have against Anglo, whether known or unknown, arising out of any cause whatsoever from the beginning of the world to the present time, and particularly Zuckerman and Mandeville do so release Anglo from all such claims, demands or liabilities arising out of or in connection with the real or personal property hereinabove described or any deed of trust, crop mortgage, chattel mortgage, conditional sale contract, promissory note or other agreement or instrument relating to said real or personal property to which Anglo was or is a party and whether or not the said Zuckerman or Mandeville was or is a party thereto or interested therein, provided, however, nothing contained in this

Exhibit A—(Continued)

paragraph shall be construed as releasing Anglo from any obligations assumed by it under this lease and agreement.

(33) No representations have been made by any party to any other hereunder inducing the making of this contract, and no undertakings have been entered into between any of the parties hereto except those which are specifically set forth in this lease and agreement, and it is understood that this lease and agreement is the entire agreement of the parties with reference to the subject matter hereof. It is understood that neither Crystal nor Pacific nor Stockton shall have any responsibility for the enforcement of the terms of this lease or the performance hereof except as to the specific provisions regarding disbursement of certain funds by Stockton.

(34) The terms of this lease and agreement and the covenants and agreements herein contained shall apply to and shall bind and inure to the benefit of Zuckerman, his heirs, executors, administrators and assigns, should this lease and agreement or any interest therein pass to any of said persons with consent of Anglo as herein provided. The terms of this lease and agreement and the covenants and agreements herein contained shall apply to and shall bind and inure to the benefit of Anglo, its successors and assigns.

Exhibit A—(Continued)

In Witness Whereof, the parties hereto have hereunto subscribed their respective names this....day of...., 1941.

The Anglo California National Bank
of San Francisco

By.....

By.....

“Anglo”

.....

“Zuckerman”

Mandeville Island Farms, Inc.

By.....

“Mandeville” President

American Crystal Sugar Company

By.....

“Crystal”

Pacific Guano Company

By.....

By.....

“Pacific”

Stockton Savings and Loan Bank

By.....

By.....

“Stockton”

Exhibit “A” to Lease and Agreement

- Two (2) Self propelled, 3 row potato diggers
- Two (2) Potato washers and graders
- One (1) Onion sorter and grader
- Four (4) Frigidaire electric refrigerators, located one each at Camp 29, Camp 23, Camp 21 and Camp 1

Exhibit A—(Continued)

- Two (2) Servel electric refrigerators, located one each at Camp 13, and Camp 7
- Four (4) Large six foot kitchen ranges, with double ovens, flat top rebuilt, located one each at Camps 13, 23, 29 and 21
- One (1) 1,000 gallon tank
- Two (2) 2,000 gallon tanks
- One (1) Ingle two oven range, fire box at left 8'x2'5", manufactured by W. S. Ray Company, reconditioned.
- One (1) Ray standard range No. 222, two ovens, center fire box, 6'x285", reconditioned.

KITCHEN UTENSILS

- | | |
|--------------------------------------|-----------------------------------|
| 81 Large Soup Plates Heavy Porcelain | 4 Aluminum Syrup Pitchers |
| 158 Dinner Plates | 10 Small Bread Pans |
| 65 Cake Plates 90 Saucers | 18 Long Square Bread Pans |
| 51 Small soup plates | 2 Large Gravy Strainers |
| 69 Porcelain Cups (assorted) | 1 Large Meat Saw |
| 6 New dish pans | 4 Meat Grinders |
| 76 Porcelain platters | 37 Asst. Agate Platters |
| 28 Agate Saucers | 54 Agate Dinner Plates |
| 2 Olive Dishes | 18 Asst. Agate Square Pans |
| 141 Silver Knives | 18 Muffin Pans (12 holes) |
| 99 Silver Forks | 80 Tin Pie Plates |
| 62 Silver Tea Spoons | 6 Napkin holders |
| 152 Silver Soup Spoons | 5 Agate Bowls Large |
| 1 Two Gal. Crock | 4 Large Coffee Pots |
| 3 One Gal. Crock | 6 Dish Pans |
| 1 One-half Gal. Crock | 2 Agate Dish Pans three gal. each |
| 36 Asst. Agate Pitchers | 13 Bake Pans |
| 27 Agate Coffee Pots | 9 Flat Bake Pans |
| 13 Sugar Bowls | 7 Ladle Strainers |
| 6 Horse Radish Jars | 33 Ladles |
| 7 Syrup Jars | 7 Large Spoons |
| 32 Oil & Vinegar Jars | 1 Coffee Urn (copper) |
| 1 Orange Squeezer | 6 Potato Mashers |
| 46 Salt & Pepper Shakers | 5 Large Batter Beaters |
| 23 Deep Oblong Bowls | 2 Egg Beaters |
| 10 Mustard Bowls | 3 Water Dippers |
| 5 Large Mixing Bowls | 2 Strainers |
| 19 Aluminum Pitchers | 4 Cheese Graters |

Exhibit A—(Continued)

KITCHEN UTENSILS—(Continued)

1 Flour Sifter	1 Large Fork
1 Quart Measure	2 Large Dish Pans
21 Iron Knives	2 Soap Dishes
13 Iron Forks	2 Colander & Two large strainers
1 Dish Dryer	3 Agate Bowls—small
7 Frying pans	1 Wooden Mixing Bowl
4 Two Gal. Agate Pots	3 Rolling Pins
1 One Gal. Agate Pot	12 Meat Hooks
2 Agate Sauce Pans	5 Buckets
1 Aluminum Square Pan	3 Metal Drinking Cups
1 Oval Agate Dish Pan	2 Scales (1 balance, 1 beam)
1 Mop Wringer	6 Cruets
7 Dish Pans	1 Square Aluminum Cake Pan
9 Wash Basins	1 Spray Gun
5 Rd Iron Dough Mixing Bowls	1 Pump for 5 Gal. Can
4 Potato Peelers	2 Butcher Knives
2 Flour Scoops	1 Small Frying Pan
2 Cookie Cutters	
1 Flapjack Turner	

ALUMINUM STOCK POTS

1 Five Quart Pot	1 Two Gallon Pot—no faucet
2 15 Gallon Pot with Faucet	1 5 Gallon Pot—no faucet
1 5 Gallon Pot with Faucet	1 10 Gallon Pot—no faucet
1 15 Gallon Pot	

IRON STOCK POTS

1 15 Gallon Pot	1 10 Gallon Pot No Faucet
1 10 Gallon Pot with Faucet	1 Three Gallon with long handle
1 5 Gallon Pot no Faucet	1 Two Gallon with long handle
1 10 Gallon Pot no Faucet	5 One Gallon with long handle
6 Two Gallon Pots no Faucet	2 3½ Gallon Fire Extinguishers
2 5 Gallon Pot no Faucet	
1 Three Gallon Pot no Faucet	

ADDITIONAL MISCELLANEOUS PROPERTY

1 2 Quart Measure
11 Small Cereal Bowls (agate)
34 Cereal Bowls

Exhibit A—(Continued)

ADDITIONAL MISCELLANEOUS PROPERTY—(Continued)

Three Hundred Fifteen

(315) Cots Manufactured by Simmons Company, steel angle frame, Link Iron Spring, length 72"x36", tubular pipe ends, to fold flat under the spring. Grey enamel finish.

One

(1) Eight row onion seeder, seeder units spaced 14" apart. Power driven from main axle.

Seven

(7) Land Floats (Four 12'x30'.
Three 10'x30')

One

(1) 2 wheel disc cart

One

(1) 2 wheel disc cart with grain seeder attached.

One

(1) Welding Outfit, as follows:

1 Used 1934 Chevrolet Motor No. 14550210

1 New Roe Generator No. 200829—200 Amp.

1 Frame Complete

1 Canopy complete

1 Gas Tank 4 Side Panels 1 Lourve

1 Gas Filter 1 Tilletson Carburetor

1 Coil complete with plate to fasten to motor

1 Radiator Gas line & Fittings 3'1/2" copper tubing starter switch for starter

1 Relay for generator

2 Battery Cables, Distributor Head Rotor & Spark Plug wires.
14" 11/2" Hose, 1-1/2" Hose Clamp, 8 Hose clamps

1 Starter Lever assembly

1 Brass petcock and street elbow

1 Ford V-8 Fan special Mount.

1 Fan Belt, 30' Copper tubing

1 Pierce Governor

2 No. 554 V Pulley. No. 230 V Belt.

2 Ball Joints

1 Bayonet Gauge

1 Ford Switch Assembly

1 Ammeter

1 Loom

1 Muffler with flange

1 Carburetor adapter

Exhibit A—(Continued)

ADDITIONAL MISCELLANEOUS PROPERTY—(Continued)

- 1 Complete Thermoid Assembly coupling
- 1 Eye bolt for life No. 28 Vulcan.
- 1 XL Battery
- 1 Two Wheel Trailer on 7.00x16 Tires. 100' cable
- 1 Holder
- 1 Ground Plate

Three

- (3) Common Sense Wagons 3 $\frac{1}{4}$ x10 & 6x $\frac{1}{2}$ " tires.
Stribley Level

Two

- (2) Stribley Wingplows No. 34 and No. 35
Stribley Celery Banker No. 26

Two

- (2) Stribley Celery Cutters No. 194 and No. 195

Three

- (3) Stribley Celery Crowders No. 198, 199 and 200
Stribley Celery Disc No. 267
Stribley Celery Seeder No. 145

Three

- (3) Stribley Celery Cultivators No. 567, 568 and 569
Stribley Wheel Hoe No. 229
4-HP Cushman Gas Engine Pump & Hose Complete 2 cyl.
2" centrif.
Cook House Equipment complete consisting of: oil stove,
wood stove & pipe, lamps, dishes, coffee boiler, utensils,
knives, oil cloth, etc., table, benches.
Small tools complete consisting of: 12 hoes, 16 shovels, 6
axes, 4 rakes and any small miscellaneous equipment.

Two

- (2) 4000 gal. tanks for gasoline storage, 9'6" in diameter, 8'
high Bottom run 16 Gauge Upper runs 18 Gauge Pitched
top riveted and soldered Manhole with cover 2" outlet—
2" above bottom; 2" drain outlet on bottom.

One

- (1) Bay City latest model 25 $\frac{1}{2}$ yd. dragline with 14" drop
forged heat treated crawler treads, also with 30' dragline
boom in two halves and equipped with International 6
cylinder Model PA 40 gasoline engine; also with extra
long crawler axles to make the crawlers 2' wider than
standard or 9'8" over all; also including kerosene burner

Exhibit A—(Continued)

ADDITIONAL MISCELLANEOUS PROPERTY—(Continued)
 equipment on engine Serial No. Dragline No. 2074.
 Serial No. gasoline engine PKE 1553.

One

- (1) 1-2 yd. bucket

One

- (1) Set crawler grouser

One

- (1) Piledriving hammer

Eight

- (8) 8½ No. 9B Disc Harrows 22" Heavy Discs and with scrapers.

Two

- (2) No. 3 End Gate seeders.

Two

- (2) 30 Spike tooth harrows with draw bars.

Eight

- (8) TD 35 Diesel Tractors Wide Tread. Air cleaners, wide track 22" and lighting system with battery

One

- (1) TD 40 Diesel Tractor

Two

- (2) 4,000 gallon gasoline storage tanks.

One

- (1) 8 ft. Galion Grader

One

- (1) Used Model RD-4 Caterpillar Diesel Tractor, 60" Gauge, with 16" heat treated Grouser track shoes. Tractor Serial No. 4G-2486-W.

One

- (1) Potato washing machine with inbound conveyor, sorting table, 7½ H.P. motor, 10 H.P. Motor and pump, 4 switch boxes and pipes.

One

- (1) Onion Grader. Conveyor Table with motor. Serial No. 535

Two

- (2) 5 Gang Light all-around Timkin-equipped Davis Disc Plows, 4 units with 38" discs, wheel bands and scrapers.

One

- (1) 8' Galion Grader with 4 Ft. ext. blade & wire wheels. Serial No. 787.

Exhibit A—(Continued)

ADDITIONAL MISCELLANEOUS PROPERTY—(Continued)

Twelve Hundred

(1200) Feet 24" Pipe.

Thirty-five

(35) Water Syphons

Ten

(10) 1½ Ton Chevrolet Trucks with Flat Rack Bodies, hinged sides 2 ft. high and removable tail board, bearing the following Manufacturer's Serial No. and Motor No.

Manufacturer's Serial No.	Motor No.
6TD12-2124	T1521385
6TD12-2125	T1521443
6TD12-2126	T1521432
6TD12-2127	T1521442
6TD12-2132	T1521434
6TD12-2134	T1521416
6TD12-2135	T1521492
6TD12-2137	T1521452
6TD12-2138	T1521423
6VD07-6194	T2624127

Seven

(7) 1-2 Ton Chevrolet Pickups, bearing the following Manufacturer's Serial No. and Motor No.

Manufacturer's Serial No.	Motor No.
6HC12-3411	K1530433
6HC12-3270	K1510635
6HC12-3260	K1510651
6HC12-3268	K1510604
6HC12-3258	K1510602
6HC12-2351	K1447659
6HC12-2358	K1447642

One

(1) Chevrolet Sedan—1933—Manufacturer's Serial No. 6CA07 24989 and Motor No. 3742152

Two

(2) Chevrolet Sedans—1939:

Manufacturer's Serial No.	Motor No.
6JA12- 9780	2112432
6JA01-16483	2231977

Exhibit A—(Continued)

ADDITIONAL MISCELLANEOUS PROPERTY—(Continued)

One

- (1) 16' outboard Motor Boat
Pumps & Syphons
Fuel Storage Equipment

One

- (1) Ford Pickup

One

- (1) Ford Dump Truck

Seven

- (7) Standard Twin Tractors

One

- (1) Model W Cletrac—used

One

- (1) Automatic Water Pump

Two

- (2) Bolen Tractors—used

One

- (1) Trexler Seed Cutter

One

- (1) Lime Spreader

One

- (1) Hay Rake

One

- (1) 4 Bar Side Delivery Rake

One

- (1) Be Ge Scraper

One

- (1) 4' Scraper—used

One

- (1) Power Saw

Two

- (2) Centrifugal Pumps—used

Two

- (2) Subsoilers

One

- (1) Grain Header—rebuilt

One

- (1) Grain Cleaner—used

Exhibit A—(Continued)

ADDITIONAL MISCELLANEOUS PROPERTY—(Continued)

- Six
(6) 8' Disc Harrows
- Two
(2) Breneis 8' Disc Harrows
- One
(1) Onion Seeder Fertilizer Attachment
- One
(1) Well Driller
Planet Jr. & Wheel Attachment
- One
(1) Allis Chalmers Cultivator
- One
(1) Road Sprinkler
- Sixteen
(16) Platform Scales
- Eighteen
(18) Hand Trucks
- Eighty-four
(84) Steel Cots
- Sixty
(60) Steel Cots
- One
(1) Air Compressor & Welder—used Miscellaneous Shop
Equipment
- One
(1) Walk-In Ice Box at Camp 29 Butcher Shop
- Two
(2) Montague Ranges
- One
(1) Beet Spinner
- Two
(2) Cultivators for Beets
- Eight
(8) Beet Cultivators (Amer. Cryst.)
- One
(1) Beet Cultivator Attachment

The Court: Proceed.

Mr. Arndt: Mr. Zuckerman.

ROSCOE C. ZUCKERMAN,

called as a witness by and on behalf of the plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Roscoe C. Zuckerman.

Direct Examination

By Mr. Arndt:

Q. What is your name?

A. Roscoe C. Zuckerman.

Q. Where do you reside, Mr. Zuckerman?

A. Stockton, California.

Q. What is your occupation? A. Farmer.

Q. What is known as the Delta region of California?

A. The Delta region of California is an area between the City of Stockton and Sacramento, Antioch and Tracy, roughly, comprising several hundred thousand acres.

Q. How long have you been engaged in farming activities in the Delta region of California?

A. 33 years.

Q. Now, with what agricultural crops have you personally had experience?

The Court: Are we interested in anything other than [273] beets? Let us get down to beets, sugar beets.

Q. (By Mr. Arndt): What has been your experi-

(Testimony of Roscoe C. Zuckerman.)

ence with the raising of sugar beets in the Delta region in California?

A. I have grown sugar beets in the Delta since about 1924.

Q. In what acreages in general?

A. I have grown as high as 1,600 acres and as small as 50 acres.

Q. Now, what was your connection with Mandeville Island Farms, Inc., one of the plaintiffs in this action, in 1938 and 1939?

A. I was a stockholder and president of the company.

Q. Prior to being connected with the Mandeville Island Farms, Inc., were you connected with any other farming organizations involving sugar beets?

A. Yes, sir.

Q. And if so, in what capacity?

A. I was——

The Court: Is there any question as to this man's experience in raising sugar beets?

Mr. Works: None by us, your Honor.

Mr. Arndt: All right. [274]

Q. (By Mr. Arndt): Now, will you describe the process involved in the growing of sugar beets, including preparation of the land, planting of the seed, cultivating, thinning and harvesting and shipping?

A. The land is first plowed, disked, some times leveled, good seed bed made, beets are planted, ditches are dug for irrigation, beets are cultivated, weeded, thinned, cultivated some more, thinned some

(Testimony of Roscoe C. Zuckerman.)

more, irrigated, and that is about the process up to harvesting.

Q. What, in general, is the process of harvesting?

A. There are machinery, machines that are used to harvest beets, and beets are also harvested by hand. Before the beets are harvested, they are lifted. In the hand method, they are taken out of the ground by the toppers, the tops are cut off, and they are put in wind rows, and later loaded into vehicles to haul them to the dumps.

Q. With reference to Mandeville Island, is that an actual island? A. Yes.

Q. Where is it located with reference to Stockton?

A. It is located about 22 miles northwesterly from Stockton.

Q. Now, when did Mandeville Island——

The Court: Is it a complete island?

The Witness: Yes, sir. [275]

Q. (By Mr. Arndt): When did Mandeville Island Farms, Inc., first acquire Mandeville Island?

A. In about November 1937.

Q. From whom did it acquire it?

A. The Empire Farms Company.

Q. Was there any sugar dump on Mandeville Island at the time that Mandeville Island Farms, Inc., acquired the property? A. Yes.

Q. What is meant by a sugar dump?

A. Sugar dump is where the beets are hauled from the field to the dump, laid on the dump, loaded onto barges.

(Testimony of Roscoe C. Zuckerman.)

The Court: In other words, sugar beets had been raised there before you acquired the property?

The Witness: Yes, sir.

Q. (By Mr. Arndt): Before you acquired the property, to whom were the sugar beets sold that were raised on the tract?

A. To the American Crystal Sugar Company.

Q. To whom did this dump belong?

A. To the American Crystal Sugar Company.

Q. Was there any other dump on the island?

A. No.

The Court: In other words, that was the only outlet for your beets? [276]

The Witness: Yes, your Honor.

Mr. Arndt: Did you enter into a contract with the American Crystal Sugar Company for the crop year 1938?

A. Yes.

Q. And that was for Mandeville Island Farms, Inc., I assume? A. Yes.

The Court: And then the flood came?

The Witness: Yes.

Q. (By Mr. Arndt): When did that flood come?

A. It came on Sunday, February 13, 1938. I can remember that.

The Court: I should imagine so. As a matter of curiosity, do you keep raising beets year after year on the same soil?

The Witness: Generally not, although I have raised beets on the same land for six consecutive years.

(Testimony of Roscoe C. Zuckerman.)

The Court: Do you use any fertilizer?

The Witness: Yes, we use fertilizer.

The Court: When you rotate, what do you rotate with?

The Witness: Potatoes, onions, barley, and such crops as that.

Q. (By Mr. Arndt): What was the effect of the flood on the 1938 beet sugar crop?

A. All that were planted at the time of the flood were [277] covered with 12 feet of water.

Q. Were any beets raised in the 1938 crop?

A. No.

Q. Did Mandeville Island Farms, Inc., owe Crystal any money after the flood? A. Yes.

Q. At the time you entered into the 1938 contract with Crystal, did you give any crop or chattel mortgage to Crystal?

The Court: Counsel, you have introduced them in evidence here.

Mr. Arndt: All right.

The Court: Can't we get down to the circumstances under which these various contracts were executed, so as to give the court a little background into the whys and wherefores, particularly as to the change in form?

Mr. Arndt: All right.

Q. Explain in general the circumstances under which the 1938 contract was signed.

A. Will you please pardon me? I wasn't listening.

(Testimony of Roscoe C. Zuckerman.)

Q. Explain the circumstances in general as to how the 1938 contract was signed.

The Court: That contract is not in dispute, is it?

Mr. Arndt: That is correct.

The Court: Let's find out what occurred when the change [278] in the form of contract was made. From the growers' point of view, it must have been presented to them in some manner. Let's find out what that was. That is where I am looking for some light.

Q. (By Mr. Arndt): Did you attend any meeting with Mr. Zitkowski or anyone else connected with American Crystal with any growers at which there was any discussion, any intimation of a change that was contemplated from the 1938 form of single return of Clarksburg to the joint return?

A. No, I did not.

The Court: You don't know anything about why there was a different contract?

The Witness: No, I do not.

The Court: And you never made any inquiry?

The Witness: It never at that time made any impression upon me.

The Court: As far as your knowledge is concerned, one year you signed one contract and the next year you signed a different contract, and there was no discussion about the change?

The Witness: There was not at the time that I signed the contract.

The Court: May I ask you this: You did sign the contract on behalf of your company, didn't you?

(Testimony of Roscoe C. Zuckerman.)

The Witness: Yes, your Honor. [279]

The Court: Was that contract presented to your board of directors?

The Witness: No.

The Court: You just simply went ahead in your capacity——

The Witness: I was president of the company and transacted the business for the company and signed the contract.

The Court: When did you first discover that there was a different arrangement for payment?

The Witness: I think it was along about 1940.

The Court: Up to that time had your relations with the Crystal people been on friendly terms?

The Witness: I would say fairly friendly.

The Court: When you executed this contract, the first contract that made a change in the terms, was there any—to put it in the way of a leading question—any compulsion of any kind, rather than signing any other contract?

The Witness: Well, I don't know.

The Court: You were a free agent, weren't you? Let's put it that way.

The Witness: No, I don't think I was a free agent at that meeting. At the time of the flood I owed Crystal \$26,000 and I went through a very, very serious difficult time to reclaim that land back from death. [280]

The Court: But there was no pressure on you in one way or another, was there?

The Witness: Not particular pressure. I got it

(Testimony of Roscoe C. Zuckerman.)

done and I was ready to plant the crop in 1939 and I accepted the contract for about 1,000 acres of sugar beets.

The Court: May I ask you another question? If there is no objection, I would like to ask some more questions along the line I am interested in.

Mr. Arndt: I would much rather have your Honor ask the questions, then, and that would save a lot of time. [281]

The Court: When did you first have any discussion with the Crystal people about the method of payment, figuring the price of sugar beets on an average rather than on the Clarksburg plan?

The Witness: I have been trying to bring that back into my senses and I was trying to figure out exactly when it happened.

During the payments that were coming to me in 1939 my business, and practically all of it that was handled between Crystal and myself was done with Mr. Holmes, who was their general manager.

Along in the spring of 1940—Mr. Holmes said: “Well, now, there is going to be some additional payments coming.”

Those payments never materialized and I could see that I wasn't going to pay out the money that I had gotten from Crystal and that the sale of beets wouldn't amount to the amount of money that I owed them. And at one period there I had figured and discussed with him that I would get about \$15,000 additional payment.

If I had gotten that \$15,000 additional payment,

(Testimony of Roscoe C. Zuckerman.)

by the coat sleeve manipulation, I figured I would be about even with them on the 1939 advances for beets. When it didn't materialize I knew that I was going to be short.

I think there was one day that Mr. Holmes had come to [282] visit me on the ranch that I brought up this situation and discussed it with him and if I have any memory whatsoever about any objections it was at that time, in the spring or early summer of 1940.

The Court: And what did you say to him at that time?

The Witness: I said it looked to me like, and these may not be the exact words, that I am not doing as well in 1939 as the Crystal growers did in 1938.

The Court: Did he make any comment?

The Witness: Mr. Holmes?

The Court: Yes.

The Witness: Not that made any impression upon me.

The Court: You said you have been a farmer for how long?

The Witness: 33 years.

The Court: And you never get what you anticipate, do you?

The Witness: Sometimes but mostly it is the other way, but we do sometimes have good years.

The Court: The only thing I have to say is the farmer is an optimist.

The Witness: He has to be an optimist to be a

(Testimony of Roscoe C. Zuckerman.)

farmer. He has to be an optimist at least to be a beet farmer.

The Court: You ought to try an orange grove.

The Witness: Maybe they are worse.

The Court: You simply complained that you weren't getting [283] as much out of your beets as you had gotten previously.

The Witness: That is right.

The Court: And then you went on to another year.

The Witness: I did.

The Court: And another contract.

The Witness: Yes.

The Court: Did you have any discussions with them on the second contract?

The Witness: No.

The Court: Or the third one?

The Witness: No. I was still in the hole and I was still struggling to get out. I was struggling to pay off.

The Court: When did you quit raising beets?

The Witness: I stopped raising beets for Crystal in 19—at the end of 1944 crop.

The Court: You continued to raise beets up until that time?

The Witness: Yes.

The Court: Are you still raising them?

The Witness: I had a few beets in 1945, about 50 acres. This ranch is 5,000 acres. I had a few beets in 1946 and a few in 1947 and a few in 1948 and none in 1949 and none in 1950.

(Testimony of Roscoe C. Zuckerman.)

The Court: And during the time that these contracts were in existence, during the time you were working under [284] those years you are complaining about—

The Witness: 1939 to 1941.

The Court: You hadn't discussed with Mr. Holmes or anybody else at Crystal as to why they had changed their method of payment?

The Witness: No, except as I said this one time.

The Court: That you hadn't gotten as much out of them as you got in 1938?

The Witness: Yes, that is right.

The Court: But that wasn't a complaint as to the method of figuring but the fact that you just weren't getting that much money?

The Witness: I knew then that the scale of pay of the 1938 crop was Crystal's rate of pay which was higher than the Holly and Spreckels and we had some conversation at that time about that and that was early in 1940.

The Court: That is all, proceed.

Q. (By Mr. Arndt): Now, during what years did Mandeville—what crop years did Mandeville Island Farms Inc., farm the property?

A. 1939 and 1940 and part of 1941.

Q. And then in 1941 came the section 75 proceedings of Mandeville followed by the Anglo Bank taking back the property under the composition agreement with the lease to you individually? [285]

A. Yes.

(Testimony of Roscoe C. Zuckerman.)

Q. And then for the year 1941 and subsequent years you farmed the property yourself?

A. Yes.

The Court: You say Mandeville went under 75?

Mr. Arndt: Yes. That is in the stipulation we have here. Mandeville went in the 75 in 1941 and under the composition agreement, which is part of this stipulation, the property went back to the Anglo-London-Paris National Bank which had the first mortgage on it who, in turn, made a lease to Roscoe Zuckerman which was joined into by Crystal and other preferred creditors.

The Court: What is the status of Mandeville Farms now, or when this suit was commenced?

Mr. Arndt: The status is perfectly all right. In other words, it has been released of its obligations. The obligations have been taken over under this compromise. All the preferred creditors were paid either by the property or Roscoe Zuckerman. They have been paid off.

The Court: How about the creditors that weren't preferred?

Mr. Arndt: The unsecured creditors?

The Court: Yes.

Mr. Arndt: Well, I had better ask Mr. Zuckerman about that. He can tell us better. [286]

The Court: The record will show that, counsel. The only thing is I was wondering if we might find ourselves in a position where the plaintiffs are not the real parties in interest.

(Testimony of Roscoe C. Zuckerman.)

Mr. Arndt: I am not worried about that. They are the real parties in interest.

The Court: So far as you are concerned the record is clear?

Mr. Arndt: That is right.

The Court: You may proceed. I am not looking for trouble.

Q. (By Mr. Arndt): Now, what type of machinery and equipment and apparatus was used during these years in connection with the growing of sugar beets?

The Court: What materiality is that, counsel?

Mr. Arndt: I just wanted to bring out that the equipment was all chattel mortgaged to Crystal.

The Court: And you have the record here of the chattel mortgages. I assume when they were wiped out they were indebted to Crystal until the chattel mortgage was satisfied?

Mr. Arndt: Yes. It was what you might call economic duress but if that is understood—

The Court: I don't know whether it is that or simply giving a man a chance to work out of his debt. There are two ways of looking at it when you carry a man who is in debt [287] to you—whether it is economic pressure or whether you are a good fellow by carrying him.

Mr. Arndt: I was just referring to the fact that he couldn't deal with any other sugar company while sugar company No. 1 had a crop mortgage on the land which continued until it was paid off as this mortgage shows.

(Testimony of Roscoe C. Zuckerman.)

The Court: May I ask this question? Was there any other sugar company that you could have dealt with from an economic point of view?

The Witness: That I could?

The Court: Yes.

The Witness: Yes.

The Court: Which one?

The Witness: I could have dealt with Holly or Spreckels, either one, and in that regard I at different times inquired whether they would purchase beets from me. I could never make an agreement with them.

The Court: In other words, in order to make an agreement with them you had to pay off Crystal?

The Witness: I had to get Crystal's indebtedness off of the record.

The Court: They had been carrying you and they carried you through the storm?

The Witness: Yes.

Q. (By Mr. Arndt): That is all the questions I have at [288] this time.

The Court: Cross examination.

Cross Examination

By Mr. Works:

Q. Mr. Zuckerman, when did you first find out that the crop contracts for 1939, 1940 and 1941 were predicated upon a joint net price determination factor?

A. As I told the court, I can't tell you exactly when that was but it was at an early period in 1940, to the best of my memory.

(Testimony of Roscoe C. Zuckerman.)

Q. Are you referring now to this conversation with Mr. Holmes? A. Yes, sir.

Q. In which you discussed the fact that the nets had been higher in 1938? A. Yes.

Q. What did he say to you in that conversation which informed you that settlements were then being made—I mean in 1939, '40 and '41, upon a joint net basis instead of a single net basis?

Mr. Arndt: Just a moment. At that time settlements were not being made for 1940 and 1941, I think it was '39.

Mr. Works: I think the witness understands.

Q. (By Mr. Works): What did he say in that conversation to indicate to you that there had been a change in the method [289] of determining the net return to the grower?

A. I can't tell you exactly what he said or what was said by either of us, but I think—I have this memory of an understanding that there was to be a joint return and that I would get paid the same as all of the beet growers in the district, whether they grew for Holly or whether they grew for Spreckels or whether they grew for Crystal.

Q. Can you tell us the substance of what he said which conveyed that information to you?

A. That would be, other than what I have just said, that it would—we would get the same price for our beets that all of the growers in the district obtained for the same kind of beets.

Q. Where did this conversation take place with Mr. Holmes?

(Testimony of Roscoe C. Zuckerman.)

A. The one that I am talking about, on Mandeville Island.

Q. At your place? A. Yes.

Q. Where did you sign the 1939 American Crystal contract?

A. I think I signed it in my office.

Q. Where did you sign the 1940 contract?

A. I would say in the same place, in my office.

Q. At the time you signed the 1940 contract, you knew that settlement was to be based on a joint net, an average net, as to the returns of all three companies, didn't you? A. Yes.

Q. Where did you sign the 1941 contract?

Mr. Arndt: Counsel, there are two 1941s. You mean the first one, which was Mandeville, or the second one, which was Sugarman?

Q. (By Mr. Works): Give me the information as to each one, please.

A. Well, I can't state with absolute accuracy where I signed the 1941 contracts. It could have been in my office, it could have been in Holmes' office, it could have been in the attorney's office, Crystal's attorneys. That is about the only places that I could have signed them.

The Court: But you signed it, anyway?

The Witness: I signed it.

Q. (By Mr. Works): I gather you live on an island, but you have neighbors, don't you?

A. Would you pardon me, but I did not hear that?

(Testimony of Roscoe C. Zuckerman.)

Q. Do you have neighbors adjacent to your location on Mandeville? A. On land?

Q. Neighbors. [291]

A. Yes. There are no neighbors on Mandeville Island.

Q. I understand. You are in sort of an agricultural community where a lot of beet growers live, aren't you?

A. Well, there are beets grown on other land adjacent to Mandeville.

Q. Did you talk to any other beet growers prior to the time you signed the 1939 contract with reference to any contemplated change in the form of the American Crystal and Holly and Spreckels contracts? A. No, I did not.

Q. Did you not know that there had been a meeting at Sacramento some time prior to the time when those contracts were put out, at which a committee of growers met with representatives of the three companies and discussed this joint net?

A. No, I didn't.

Q. Did you not tell Lester Holmes prior to the time when you signed the 1939 contract that you didn't like this joint net, because you felt you could make more money on a single net basis?

A. Not that I can remember.

Q. Would you say that you didn't make such a statement, either in substance or in effect?

A. I can't say that I can remember making such a [292] statement.

(Testimony of Roscoe C. Zuckerman.)

Q. During 1938, 1939, 1940 and 1941, you saw a good deal of Lester Holmes, didn't you?

A. I did not see him much in 1938 while the island was being de-watered. I saw him quite a lot during the year 1939.

Q. You say your relationships with the Crystal people were fairly friendly?

A. I would regard them so, yes.

Q. Didn't you address Mr. Holmes in your letters to him as Lester and didn't you sign your letters to him and to Mr. Wilds as Roscoe?

A. I could have.

Q. Your relations with them were very friendly, were they not, Mr. Zuckerman?

A. Well, I would say that they were a reasonable friendly business relationship.

Q. Didn't they carry you and your activities from the fall of 1937 on to after 1942, year after year?

A. I owed them money and they loaned me money, but we had our differences, business differences.

Q. And weren't you continually importuning them for money to keep you in, not only the sugar beet business, but in raising other crops?

A. I asked them to loan me money to raise crops other [293] than sugar beets.

Q. Didn't you know at all times during 1939, 1940 and 1941 that sugar beets delivered to Clarksburg were being shipped to Oxnard and had been prior to 1939?

(Testimony of Roscoe C. Zuckerman.)

A. The first knowledge that I had was when my beets went to Oxnard in 1939.

Q. In 1939? A. Yes.

Q. And how did you find that out?

A. By seeing them, knowing that the barges were not going to Clarksburg, that arrangements were made in Stockton to transfer them.

Q. Did you talk to Lester Holmes about that situation? A. I probably did.

Q. Did you make any complaint to him about it or not? A. No.

Q. You don't recall whether you spoke to him or not?

A. Well, the probability is that I did speak to him about it.

Q. And the probabilities are that he told you that that was customary practice and had been, isn't that right?

A. I wouldn't answer that as yes.

Q. This Mandeville Island Farm Company, you, I understand, were the president and also a stockholder. What proportion [294] of the stock did you hold? A. Half at that time.

Q. There was no control? A. No.

Q. To whom did you sell your sugar beets after 1944? A. The Holly Sugar Company.

Q. And that was the situation during each of those other later years that you mentioned?

A. Yes.

Q. Have you ever sold to Spreckels?

A. Yes.

(Testimony of Roscoe C. Zuckerman.)

Q. When?

A. Not from Mandeville, but from another farm.

Q. You have done business with all three of these companies, is that correct? A. Yes.

Q. Now, your first contractual relationship with American Crystal commenced with this 1938 crop season, did it not?

A. Yes. Contractual.

Q. That is what I mean. And you executed a 1938 crop year contract—let me withdraw that, if I may.

On or about December 2, 1937, do you recall signing a crop year contract with American Crystal?

A. Yes, I can remember of having signed a contract [295] with Crystal.

Q. Which crop year would that have covered, signed in December of 1937?

A. The 1938 crop year.

Q. That would be the 1938?

A. We call it 1938-'39.

Q. Yes. The crop year of 1938 would commence on August 1, 1938, I believe? A. No.

Q. No? Tell me when.

A. Generally, the 1938 contract would start when the beets were planted in 1938, but we didn't finally get paid for those beets until the following August.

Q. I understand. At the time you signed that contract, you didn't owe the American Crystal Sugar Company a nickel, did you?

A. Which contract?

Q. The contract you signed on December 2, 1937.

(Testimony of Roscoe C. Zuckerman.)

A. No, I did not. I might have, but—I might have gotten advances prior to the signing of the contract, but I would have to refer to the books. It could have been a few weeks ahead that I did get the money, and it might have been a few weeks afterwards.

Q. It wouldn't have amounted to very much, anyway, would it, at that time? [296]

A. It might have amounted to \$10,000.

The Court: Whatever it was, it was advanced in contemplation of the execution of the contract?

The Witness: That is right.

The Court: So it is part of the same transaction?

The Witness: Yes.

Mr. Works: May I approach the witness and show him this document, your Honor?

The Court: Yes, certainly.

Q. (By Mr. Works): I show you a letter on Mandeville Island Farms, Inc., letterhead, dated December 2, 1937, and ask you to state if that is your signature.

A. No, that is not my signature.

Q. Who wrote it for you?

A. It looks like T—Miss Taylor, my secretary.

Q. Miss G. P. Taylor?

A. Yes, Gladys Taylor.

Q. The letter was dictated by you, however?

A. Yes.

The Court: It is your letter?

The Witness: Yes. May I read it?

Mr. Works: Surely.

(Testimony of Roscoe C. Zuckerman.)

Q. (By Mr. Works): You were referring to this crop year contract we have been talking about for 1938? A. Yes. [297]

Q. You say here, "This contract is being signed and forwarded to you"—that is to Lester Holmes, "Dear Lester."—"In addition to the above—" referring to the beet contract—"on the basis and arrangement that American Crystal will loan to Mandeville Island Farms \$125,000 as shown by the budget which you already have. Without the loan of the money, we could not grow the beets, so it is with that understanding concerning erecting of the beet dump and the loan of the money that I am signing this agreement and forwarding it to you."

That is a fact, is it not, that unless they had made you a substantial advance, you couldn't have grown any beets at all that year, and you wouldn't have?

A. That is correct.

Q. Isn't that fact also true as to 1939, 1940, 1941 and 1942, you wouldn't have grown a single beet unless the American Crystal Sugar Company—

The Court: Of what materiality is that, counsel?

The Witness: I can answer that.

The Court: Wait a minute. I am just asking counsel.

Mr. Works: Your Honor, it indicates this, I think: There is a claim of economic duress, and we propose to show by a sheaf of correspondence that all of the pressure was the other way, that this almost approached a joint venture as between the com-

(Testimony of Roscoe C. Zuckerman.)

pany and Mr. Zuckerman and this is the opening gun. He either owed them nothing at all or very little, and [298] at that time he insisted on their financing him.

The Court: Out in my country, it is called grubstaking.

Mr. Works: I don't object to the use of that term, either, your Honor, but I do want to show the relationship there between these parties. I am not going to comment upon these letters. I am going to have them identified and introduced, and then your Honor can study them.

Mr. Arndt: I have already offered to stipulate, counsel, to the whole sheaf of letters you gave me. You don't have to show them to the witness. I am willing to stipulate to them.

The Court: But after you stipulate to them and get them in the record, I am going to have to study them.

Mr. Arndt: And then I am going to file another bunch, the replies, and the rest of the letters.

The Court: The point I am making is this: It is probably to the advantage of both parties. You wanted the beets?

Mr. Works: **Exactly.**

The Court: And they wanted to raise them for profit.

Mr. Works: **Exactly.**

The Court: You are not claiming that it was a joint venture?

Mr. Works: **No.**

(Testimony of Roscoe C. Zuckerman.)

The Court : A legal joint venture. [299]

Mr. Works: No, not in the technical sense.

The Court: You avoid any responsibility by reason of any arrangement like that.

Mr. Works: Not in the technical sense at all, but I am attempting to show, if the court please, that Mr. Zuckerman was not the victim of this combination of which he complains.

The Court: Well, of course, counsel, we have to recognize this: It doesn't make any difference whether he sold to Crystal or to Holly or to Spreckels during those three years. They were paid on the same basis.

Mr. Works: That is right.

The Court: So there wasn't any advantage to him in shifting around from one refinery to the other.

Mr. Works: I didn't mean that at all.

The Court: So, as far as those three particular years are concerned, I think I can see very quickly the picture here. I don't think we need to spend any time on it.

Mr. Works: All right.

The Witness: There came times during that period, your Honor, that Crystal was very reluctant to give me a contract for beets.

Mr. Works: I'd better put these letters in, I think, your Honor.

The Court: In other words, they wanted their money?

The Witness: Yes. [300]

(Testimony of Roscoe C. Zuckerman.)

The Court: Well, they were extending you a pretty heavy line of credit, weren't they?

The Witness: I thought so.

Mr. Works: Well, your Honor has the factual situation in mind.

The Court: If you loaned me \$125,000, I wouldn't feel very bad.

Q. (By Mr. Works): Did I understand you to say that the island acreage, productive acreage, was about 5,000 acres? A. Yes.

Q. In the course of the year 1939, did you raise any crop there except sugar beets? A. Yes.

Q. What?

A. I had barley, potatoes, onions. I think that was all.

Q. Was that true in 1940 and 1941, you raised other crops?

A. Yes. I had similar crops in 1940 and similar crops in 1941.

Q. How many acres of the various crops did you raise in 1939, the ones you have mentioned? Can you give us the comparative acreage?

A. There was approximately—— [301]

The Court: All we are interested in is beets, isn't that right?

Q. (By Mr. Weeks): What was the beet acreage there for those three years?

A. 1939, I think, was 1,000 acres of beets.

Q. And 4,000 in other crops, or was some of it lying idle?

(Testimony of Roscoe C. Zuckerman.)

A. There was considerable idle acreage that was not planted.

Q. In 1940, what was the beet acreage?

A. 1940, I think that was 1200 acres.

Mr. Arndt: Counsel, I will supply the exact information for you, if you want it, and put it in a stipulation.

Mr. Works: I don't need it. I can get it much quicker this way.

Q. What was the acreage of sugar beets in 1941?

A. That is hard for me to remember.

Q. Can you approximate it?

A. As I remember, there was quite a large acreage planted, but not such a large acreage harvested. I think maybe the contract was for 1,000 acres and there was about 600 acres harvested or 500 acres harvested.

Q. What are you growing on Mandeville Island now?

A. I am growing grain, potatoes, asparagus, asparagus nursery. I think that is about it. [302]

Mr. Works: That's all. Thank you.

The Court: Any further questions?

Mr. Arndt: No.

The Court: That's all.

Mr. Works: I might ask one further question, and I mean one, your Honor.

Q. How high did this indebtedness go, what was its top peak as between you and American Crystal, just so we won't have to dig it out of all these papers? Do you remember?

(Testimony of Roscoe C. Zuckerman.)

A. I think about 90 some odd thousand dollars or somewhere between 90 and 110. My memory of looking over the monthly balances that I owed Crystal—

Q. Do I understand that you didn't get the full \$125,000 you mentioned in this letter of December 2, 1937?

A. I could have gotten that amount, but there were payments in the interim. They may have advanced a total of \$125,000 on the one side and received payments on the other, which made the monthly balance not as great as that.

Mr. Works: We get it. Thank you.

(Witness excused.)

Mr. Arndt: Mr. Evans. [303]

KEITH EVANS

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Keith Evans.

Direct Examination

By Mr. Arndt:

Q. Where do you reside, Mr. Evans?

A. In Stockton, California.

Q. How long have you lived in Stockton?

A. Since 1934.

Q. What is your occupation at the present time?

A. Farmer.

(Testimony of Keith Evans.)

Q. How long have you been in the farming business in California? A. Since 1934. [304]

Q. What is your specific job at the present time?

A. My specific job at the present time is general superintendent for the trust department for the Bank of America.

Q. On any particular properties?

A. Yes. At the moment I am handling the Rosetti Estate on Victoria Island and Woodward Island.

Q. And is that part of the San Joaquin Delta?

A. That is right.

Q. Are those located in San Joaquin County?

A. That is right.

Mr. Arndt: If the court please, if it would be any help to the court I have a map of the county in case your Honor would like to see just where the islands are.

The Court: Counsel, I am working on a case now involving the San Joaquin River and the Friant Dam. I am quite familiar with that territory.

Mr. Arndt: All right, your Honor.

Q. (By Mr. Arndt): Now, prior to this job you had on Victoria and Woodward Islands, by whom were you employed?

A. By the Edward DeCandia Company in Stockton.

Q. Was that in connection with farming operations? A. Yes.

Q. Now, in connection with sugar beets what has been your experience in connection with the produc-

(Testimony of Keith Evans.)

ing of sugar [305] beets in the San Joaquin Delta?

A. I grew sugar beets under a contract with the Holly Sugar Company from 1934 to 1937.

Q. Where was that? A. On Empire Tract.

Q. Now, with reference to the particular property involved in this litigation and when you had contracts for sugar, where was that property located?

A. That property was located on Holland Island known as the Holland Tract in Contra Costa County.

Q. Is that also in the San Joaquin Delta?

A. Yes.

Q. At any time did that tract have any other name?

A. Well, I think the American Crystal Sugar Company changed the name of it to American Island.

Q. Now, at the time that American Crystal acquired ownership of that island were you raising sugar beets on that island?

A. Prior to that time?

Q. Yes. A. Yes, one year.

Q. For whom or with whom?

A. I grew beets for the American Crystal Sugar Company in 1938 under a contract that they had given to a Mr. Hays, who had the lease on the same property. [306]

Q. And then when American Crystal took over the property as owners you were under a contract with Crystal at that time? A. That is right.

(Testimony of Keith Evans.)

Q. And then you signed an agreement with Crystal for what years? A. 1939.

Q. And then 1940, '41 and '42, is that correct?

A. Yes.

Q. And during those years you were also a tenant of Crystal? A. That is right.

Q. Now, did you have any conversation with anyone connected with Crystal about this change in the contract from the individual return of Crystal alone, to the joint return? A. Yes.

Q. With whom?

A. With Frank Cleveland. He was their agricultural man.

Q. And when and where did that occur?

A. That occurred at their Clarksburg office at the time I signed the 1939 contract.

Q. And what was said?

A. Well, as near as I can remember I told Mr. Cleveland that—I asked him why we had that kind of contract for [307] that year—why they were paying off on the average instead of their individual returns like they had prior to that time.

Q. And what did he say?

A. Well, his excuse was that they had sold—
Mr. Works: Just a minute. What did he say, please?

The Court: Yes.

The Witness: What is that?

Q. (By Mr. Works): What did he say?

The Witness: It is pretty hard to remember the exact words.

(Testimony of Keith Evans.)

The Court: Just give us the sum and substance of what he said—not what you think it was, or whether it was an excuse or anything else. Just what he said in substance why the change in the form of the contract.

The Witness: His wording was that they had sold most of their sugar the previous year locally and that was the difference—that was the reason for the difference in the payoff. In other words, there was no freight involved and there was less sales expense and what not.

Q. (By Mr. Arndt): Was there anything further said by either of you in that conversation?

A. No, other than the fact that he said that that was their contract that was being made for that year.

Q. Now, did you have any subsequent conversations on that same general subject with anyone connected with Crystal? [308]

A. I don't think so.

Mr. Arndt: That is all.

The Court: Cross examine.

Mr. Works: Yes, your Honor.

Cross Examination

By Mr. Works:

Q. You had this conversation with Mr. Cleveland at the Clarksburg office when you signed the 1939 contract? A. That is right.

Q. And in what month and what year was that?

A. I imagine it was December or January—December of '38 perhaps, or January of '39.

Q. December of 1938 or January of 1939?

(Testimony of Keith Evans.)

A. I believe so, yes.

Q. And when he mentioned the element of freight did you have any further discussion with him along that line? A. No, I don't believe so.

Mr. Works: That is all.

The Court: I am interested to know whether he knew that part of the beets were being shipped to Oxnard?

The Witness: Yes, I knew part of the beets were being shipped to Oxnard.

The Court: When did you first learn that?

The Witness: Well, I happened to farm on the American Crystal Sugar Company's ranch and they had a drag line there [309] that was used for keeping canals clean and making ditches and when they made that transfer at Stockton from barges to gondola cars to be shipped to Oxnard, they used the drag line off the ranch down there and I knew that that machine had been sent to Stockton primarily for the beet transfer.

The Court: In other words, during the term of the contract you knew that your sugar, part of your beets were being refined at Oxnard?

The Witness: That is right.

Q. (By Mr. Works): Just to clarify that. The freight item that you were referring to and which you and Mr. Cleveland discussed, was the freight on beets from Clarksburg to Oxnard, is that correct?

A. No. My understanding was that it was refined sugar.

Q. Refined sugar from where to where?

(Testimony of Keith Evans.)

A. Well, from the source of processing to the consumer. That was my impression, or the message that he was trying to convey to me.

Q. Did you have a pretty good crop in 1939?

A. 1939?

Q. Yes.

A. You mean in the way of tonnage or sugar?

Q. I mean in the way of tonnage of tonnage of beets.

A. No, the tonnage wasn't too large in 1939.

Q. How was the sugar crop? [310]

A. The sugar content was not bad.

Q. How was the sugar crop? A. The crop?

Q. Yes, in California in 1939?

A. The sugar crop in 1939 I think perhaps was a little below average.

Q. Below average? A. Yes.

Q. How much did it fall off?

A. Well, that would be pretty hard for me to remember without the records.

Q. The '40 crop was below average, too, was it? I mean the '40 sugar production?

A. Are you speaking of sacks of sugar now or tons of beets?

Q. I am speaking now of—

The Court: Look out, counsel, you are going to be under cross examination yourself.

Mr. Works: Perhaps I should be, your Honor.

Q. (By Mr. Works): I am talking about sugar production in the State of California now for the crop year 1939.

(Testimony of Keith Evans.)

Mr. Arndt: Northern and Southern California both?

The Court: Counsel, why ask this witness that? You have the figures there. There can't be any question as to the amount of production in California in the various years. [311]

This man is a farmer of beets. How does he know whether it was good or bad all over?

Mr. Arndt: I told counsel I will stipulate to any figures he gave me.

Mr. Works: I am somewhat interested in his pre-occupation with freight at that time, before the 1939 bumper crop had come in. However, we can show the facts, your Honor.

The Court: He hasn't testified to any bumper crop. Did you have a bumper crop at any time?

The Witness: Not to my knowledge.

Mr. Works: I am talking about sugar. That is all. Thank you.

The Court: That is all. We will take our afternoon recess of five minutes at this time.

(Short recess.)

The Court: You may proceed.

Mr. Arndt: If the court please, with the exception of certain matters that are going to be supplied by stipulation we rest.

The Court: May I ask counsel this question. As I stated before I have lived with this case for so long and so many other cases are intertwined with

it, that there is a doubt in my mind as to the statute of limitations.

Mr. Works: There is the question which has been discussed previously. [312]

The Court: The statute you mean of extension.

Mr. Works: The effect of the moratorium, yes.

The Court: The reason I asked that question is I notice the Evans case was not filed until 1948.

Mr. Arndt: Your Honor has held that the Evans claim is restricted to the last crop year. The only crop year involved in the Evans matter is the year 1941. Your Honor has ruled on that.

Mr. Works: Your Honor granted a motion as to 1939 and 1940.

The Court: That was a question that came to my mind. That clears up that point. Did Judge Mathes rule on that?

Mr. Arndt: You ruled on it yourself.

Mr. Works: Yes.

The Court: That is nothing. I have had cases that were appealed on me and counsel wanted to spread the mandate and I couldn't remember the case.

Mr. Works: First, your Honor, I would like to take up the matter of the sugar marketing quotas which were in effect during this period, imposed by the Department of Agriculture.

Mr. Arndt: If the court please, here is a document which was never before presented to me. I presented counsel with all of mine. I have never seen this until this minute.

Mr. Works: We will withhold it until tomorrow

morning and you may take it home with you tonight if you wish. [313]

The Court: Counsel, why don't we do as we have been doing, that any document that is introduced is always subject to correction if either party should find it is erroneous or wants to raise any question about it.

I am not a stickler on technicalities. All I want is the facts and any document you introduce here is subject to correction if you find you are in error. I am always willing to have such a matter taken up.

Mr. Works: I understand that, your Honor.

The Court: You need not be frightened that somebody is going to hurt you because if you find you have stipulated to something that you shouldn't have I will relieve you of the effect of the stipulation.

Mr. Arndt: I don't understand the purpose of this document at all. I don't see any issue—

Mr. Works: It is just to lay the foundation as to sugar quotas and their effect upon our output from Clarksburg during these three critical years.

There were acreage allotments in the first place. The amount the growers could grow was restricted. The amount the sugar companies could sell was restricted. These go directly to meet the issue tendered by the complaint that these companies had control of whatever they wanted to do with reference to sugar in Northern California.

The Government did the controlling and we want your [314] Honor to have the benefit of this evidence because it had an effect.

The Court: Well, gentlemen, for a day and a half

I have been admitting evidence which I didn't know was admissible or not. I will admit this subject to a motion to strike. I don't know the theories of the parties except generally.

Mr. Works: I have stated ours as showing we were controlled from above by the Government, both as to the acreage relating to the growing of the beets and the marketing of the sugar which had an effect on how much we could sell and which meant a larger carryover and that is one of the things Mr. Arndt is complaining about.

Mr. Arndt: You don't contend under this order that there was anything here that required you to enter into this joint return?

Mr. Works: It isn't for that purpose.

Mr. Arndt: Just a minute.

Mr. Works: It isn't for that purpose at all. It is to show a control upon the amount of sugar which could be marketed—a Governmental control.

Mr. Arndt: We object to it as incompetent, irrelevant and immaterial and not within the issues of this case. We make no objection to the competency of the particular document as not being the original. [315]

The Court: Objection overruled subject to a motion to strike. I am going to let you pour it in because you have poured it on me so far.

Mr. Works: I don't think we will compete with Mr. Arndt in volume, your Honor.

The Court: I hope not. That is all I can say.

The Clerk: Defendant's Exhibit A in evidence.

Mr. Works: Now, these are Department of Agri-

culture press releases as to acreage allotments to the growers. We are introducing these on the assumption that your Honor can take judicial notice of the official acts of a department of the Government.

The Court: I presume they were all published in the Register.

Mr. Works: I think so, yes. Not perhaps in this particular form. This is a press release as to what they had done and what they actually had done was certainly set out in the Register.

Mr. Arndt: We stipulate these are press releases but we object to them as incompetent, irrelevant and immaterial.

The Court: I am going to admit them, counsel, subject to a motion to strike. I can't tell whether they are material without reading them. What are the dates on those documents?

Mr. Works: Exhibit A.

The Clerk: The last exhibit is Plaintiffs' Exhibit B. [316]

Mr. Works: It started out with a notice, re-allotment of the 1939 sugar quota for the domestic beet sugar area.

The Court: What I am trying to ascertain is those were not war measures; those were measures due to the economic stress of the thirties?

Mr. Works: Under the 1937 sugar act, yes, your Honor. [317]

Mr. Works: The meat of this document consists of findings and a recitation of the hearings had with reference to the fixing of quotas.

The Court: That is the same as we had on other crops, hearings of growers.

Mr. Works: Exactly.

The Court: And fixing of quotas.

Mr. Works: Yes, your Honor.

The Court: They didn't fix the price which was to be paid the grower for the beets, did they?

Mr. Works: No. The material portion here appears, the first part, on page 8. "The 1939 sugar quota for the domestic beet sugar area is hereby allotted to the following purchasers in the amounts which appear opposite their respective names." Then there is a list of names, among whom appear American Crystal Sugar Company, allotment short tons, raw value, 170,174.

The Court: Where is that material except to give the court a little bit of the background of the industry?

Mr. Works: Well, we will show your Honor the effect which these allotments had. I won't go into the detail as exhibited here, but we will show you the effect which these allotments and quotas respectively had upon our operations.

Mr. Graham, will you take the stand, please? [318]

ROBERT H. GRAHAM

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Robert H. Graham.

Direct Examination

By Mr. Works:

Q. Where do you live, please, Mr. Graham?

A. Denver, Colorado.

(Testimony of Robert H. Graham.)

Q. What is your business or occupation, please, sir?

A. I am manager of the tax department of the American Crystal Sugar Company.

Q. How long have you been connected with the company?

A. Well, 1911 till 1922, when I left, and returned in 1933.

Q. And you have been there ever since?

A. Yes.

Q. What position did you hold with the company during the years 1938 through 1942, please?

A. Auditor.

Q. You were auditor of the company at that time. In that capacity and in your present capacity, did you have occasion to familiarize yourself with the books and records of the American Crystal Sugar Company as regards beet and sugar matters? [319]

A. I did.

Q. I show you a document headed "Effective Inventory at Beginning of Year, Production Quota, Current Year Production Available for Marketing that Year, and Marketings Calendar Years 1938, 1939, 1940, 1941, 1942, American Crystal Sugar Company."

Mr. Works: This document, Mr. Arndt, is taken in part from statistical records of the Sugar Division of the Department of Agriculture and in part from the records of the American Crystal Sugar Company.

(Testimony of Robert H. Graham.)

Q. Are you familiar with that, please, Mr. Graham?
A. Yes.

Q. Are you able to say that the portions of that made up from the books of the company were taken from records which were true and correct?

A. They were.

Q. Will you state to the court what that document shows as regards the effect of the federally imposed quotas upon the distribution of sugar production and/or distribution of sugar during the years 1939, 1940 and 1941?

Mr. Arndt: If the court please, I have several objections. I first object on the ground in our interrogatories we made inquiry regarding sugar production, amount of sugar owned, and so on, outside of the entire American Crystal organization. [320] Objections were made to those interrogatories on the ground that the only thing we are interested in is the situation in California, and the objections were sustained to the interrogatories that went beyond California, and we were not permitted in our interrogatories to go into some of the very matters herein set forth. After refusing the information to us and after taking the position before the court that it was immaterial, they now come in with data setting forth some of the very data that was denied us as immaterial and they refused to furnish us on our request for interrogatories.

My second objection is that this witness is being asked for a conclusion regarding a document not yet in evidence.

(Testimony of Robert H. Graham.)

Mr. Works: I will obviate that.

Mr. Arndt: My third objection is that he is being asked for his conclusion as to what these figures show, which I feel is entirely improper. It is one thing to put figures from the books in and something else to ask this witness his conclusions as to what the figures show, and that is what the question is.

The Court: There were so many interrogatories that I tried to cut them down and I can't recall whether I cut this or not. I did try to hold you down to California, except to a very limited extent. Does this cover more than California?

Mr. Works: Yes, it does. It covers the national effect on production, to show the effect of the quota system upon [321] our over-all production, and then we will go into California from this. This is an over-all picture.

Q. (By Mr. Works): I state that correctly, do I not? A. Yes.

The Court: Counsel, you can make any explanation you want, but I think probably some of his objections are good. That feature, as I have stressed before, of an explanation of the increase in the freight during those three years——

Mr. Works: We are going to get to that.

The Court: I think somebody that knows can testify to that just as well as you can put it in in this way.

Mr. Works: Well, we can give it to you both

(Testimony of Robert H. Graham.)

ways. We have statistics prepared showing just what that is.

The Court: We have the California area involved, and it is the contention of the plaintiff up until the time of these three questioned contracts, that to a very great extent your California sugar was marketed in California, and that after entering into the new contract, your sugar was distributed to a greater extent than that, and those things are reflected by the additional freight necessary for the company to pay, and which the growers paid half of during those years.

Mr. Works: I will withhold this for the time being.

The Court: What I am getting at is this: I think outside of the information you have in that, we can have somebody testify on it. [322]

Mr. Works: No question about that.

The Court: I think the auditor can tell us about it just as well as anybody else.

Mr. Works: I think first we had better show you graphically what was done, and then the market conditions can be explained during those periods. This will go into that field, your Honor.

Q. I show you, Mr. Graham, a document entitled "American Crystal Sugar Company Productions and Deliveries of Clarksburg Factory Sugar by Crop Years for the period August 1, 1937 to July 31, 1943, Stated in Hundred Pound Units." Was that prepared from the books and records of the company? A. It was.

(Testimony of Robert H. Graham.)

Q. And it correctly sets forth the figures which are shown there? A. It does.

Mr. Works: This, your Honor will show production and deliveries in Northern California, Southern California, and other states during the crop years 1937 through 1942. May I offer that in evidence at this time?

The Court: Is there any objection to this?

Mr. Arndt: I would like to ask the witness one or two questions about it and see just what it means. Has the witness got it in front of him, counsel?

The Witness: No. [323]

Mr. Works: I beg your pardon?

Mr. Arndt: Has the witness got one in front of him so he can answer questions?

Mr. Works: He will have.

Voir Dire Examination

By Mr. Arndt:

Q. Now, this column that says "Production," to what does that refer?

A. That is the number of hundredweight of sugar produced at the Clarksburg plant during the periods shown there, the crop years.

Q. When you speak about deliveries, are you referring to delivery to an ultimate destination or are you referring to delivery to a warehouse or some other storage place, or both?

A. To the customers, ultimate.

Q. When it says "Other States," have you made any breakdown as to what those other states are?

A. Yes, we have that.

Q. Is that the data that is going to follow?

(Testimony of Robert H. Graham.)

A. I don't know in what order——

Mr. Works: He does not know, but I do. It is.

Q. (By Mr. Arndt): When it speaks about this, "Note: In this connection, consider production at Oxnard," what do those figures there mean?

A. That is the hundredweight of sugar produced at [324] the Oxnard factory during the crop years shown.

Q. Then these deliveries in Southern California are of deliveries of Northern California sugar into Southern California, is that correct?

A. That is right.

The Court: Any further objection?

Mr. Arndt: No, no further objection.

Mr. Works: I think, your Honor, I will offer these two in evidence together, because one is a breakdown of the other.

The Court: You had better introduce the other, counsel. We have been talking about it. To have the record clear, you better introduce it so it will be identified in the record.

Mr. Works: Yes, your Honor.

The Court: That will be Defendant's Exhibit C.

(The document referred to was received in evidence and marked Defendant's Exhibit C.)

The Court: We know what we are talking about, but somebody else reading this record won't know.

Director Examination (Continued)

By Mr. Works:

Q. I show you another document headed "Geo-

(Testimony of Robert H. Graham.)

graphical Distribution of Sales of Clarksburg, California Factory for Crop Years 1937-1942," giving a column of states from Arizona to Wyoming, and in parallel columns are the years from 1937 to [325] 1942. Will you please state whether or not that was prepared from company records and if they are true and correct? A. It was and it is.

The Court: As I understand, this covers a six-year period?

The Witness: That is right.

Mr. Works: That is correct, your Honor, yes. I will offer this document next, if I may.

The Court: Any objection?

Mr. Arndt: No objection.

The Court: It will be admitted.

The Clerk: Exhibit D.

Mr. Arndt: What is the number of that one?

The Clerk: That is Exhibit D.

Mr. Works: May I present this document to your Honor?

The Court: Has it been marked?

Mr. Works: It has, yes. I would ask your Honor particularly to note the increased quantity of sales in the three critical years here. That will assume some significance as we go along.

The Court: You may proceed.

Mr. Works: Thank you, your Honor.

Q. I show you another document headed "Acreage and Yield, Clarksburg District." That refers to beets, does it not? [326] A. It does.

Q. Was that made up from company records?

(Testimony of Robert H. Graham.)

A. It was.

Q. And is it true and correct? A. It is.

Mr. Arndt: May I ask one question right here?

Mr. Works: Surely.

Mr. Arndt: Does this include the beets that were raised under Clarksburg contracts that were shipped to Oxnard?

The Witness: Yes. Would you let me see that, Mr. Works?

Mr. Works: Surely.

The Witness: I will see if that is shown on there definitely or not. No. But it does include that.

Mr. Arndt: You say it does?

The Witness: Yes.

Mr. Works: I will offer this, if I may.

The Court: Is there any objection?

Mr. Arndt: No objection.

The Clerk: Exhibit E.

Mr. Works: If I may present this to your Honor, I might ask you to take note, if you will, of the increased tons per grower in 1938 and 1939 in the column which I now indicate.

The evidence will show, your Honor, that what is known [327] as the Western Sales Territory embraces five of the western states, and we also have some statistics here with reference to the production of the American Crystal Sugar Company individually, and then the relationship to other companies. This was obtained from the Beet Sugar Association, showing the percentages of sugar distributions by

(Testimony of Robert H. Graham.)

sales and production in the five western states. That includes California, of course.

We couldn't get a breakdown as to California alone as to this, because the records are not kept that way by the Beet Sugar Association, and we don't know what the other companies' sales and production were, unless we get it in this form from the Beet Sugar Association.

Mr. Arndt informed me this morning he would be willing to stipulate to this upon my stating to him that that was where we obtained it, and we believe these figures to be true and correct.

Mr. Arndt: It is stipulated it is a true and correct copy of what counsel says it is.

Mr. Works: All right. I will offer it then. These contain running percentages showing American Crystal's share in the western states—its percentage, I should say, both as to sales and production. This is what we call our high netting area.

The Clerk: Exhibit F. [328]

The Court: Do I understand that in F, this last column here refers to the percentage of the total amount of sugar produced by Crystal?

Mr. Works: As related to the total of all the competing companies.

The Court: I mean of the total sugar produced in the five states?

Mr. Works: Yes, your Honor, that is right. There is the percentage of sugar produced and then the percentage of sugar distributed during this period of years.

(Testimony of Robert H. Graham.)

Mr. Arndt: I assume, counsel, that the same figures give the information for Spreckels and Holly, also?

Mr. Works: They give the total of the competing companies. We don't know what their individual figures are.

In order that your Honor may have the full picture, we propose to put in the computations of the net returns from sales for each of these years, 1937, 1938, 1939, 1940, 1941 and 1942. They will show the breakdowns, including this freight item.

Mr. Arndt: I think you will find these are already included in my exhibit, but I have no objection to them.

Mr. Works: I know 1939, 1940 and 1941 are in one of the answers to the interrogatories and I am going to use that, but I want the witness to testify all these items of expenses signify amounts actually expended by the company in connection [329] with sales of sugar.

Mr. Arndt: Counsel, aren't these all figures prepared by Haskins and Sells?

Mr. Works: Yes. You don't dispute as to any of these net return tabulations that the expenses as shown here reflect actual expenditures by the company in connection with the sales of sugar, is that correct? Because, otherwise, I will have this witness prove it.

Mr. Arndt: If this is a copy of the Haskins and Sells report, I will stipulate to it as a copy of the

(Testimony of Robert H. Graham.)

Haskins and Sells report. That is what it appears to be to me.

Mr. Works: Well, it is.

Mr. Arndt: I will so stipulate.

Mr. Works: And you don't contest its correctness as to the items shown, is that correct?

The Court: In other words, as to the accuracy of their books?

Mr. Works: That is right.

The Court: They are taken from their books?

Mr. Works: Yes. Haskins and Sells took these all from our books.

Mr. Arndt: That is correct. I will so stipulate. In other words, I think I put the same thing in myself.

Mr. Works: Then you accept these figures as accurate, is that it? That is what I am trying to get at. [330]

Mr. Arndt: Accurate insofar as it is a reflection of what the books show for the particular item.

Q. (By Mr. Works): I will show you a document marked "Itemized Breakdown of Net Sales Returns per Hundredweight for Crop Years Shown Below," which are 1937 and 1938. That was made up from the books of the company?

A. It was.

Q. And correctly reflects what the books of the company—

Mr. Arndt: Just a minute, please. Did you make it up or did Haskins and Sells make it up?

The Witness: We both made it up.

(Testimony of Robert H. Graham.)

Mr. Arndt: What do you mean, "both"?

The Witness: We make up one and Haskins and Sells make one up, and we compare them to make sure they are right.

Mr. Arndt: All right.

The Witness: So Haskins and Sells did arrive at the figures.

Q. (By Mr. Works): Does that document correctly reflect gross receipts and all of the other items which are thereon shown? A. It does.

Q. Broken down to net sales return per hundredweight? A. Yes. [331]

Q. And the freight items, freight on sugar to destinations as shown here, broken down to a cents per hundredweight basis, are moneys actually expended by the company in freight charges on the shipment of sugar, is that correct?

A. That is right.

Q. Now, these deductions, are those the deductions which are referred to in the beet growers contracts—I don't recall the exact terminology, but "Standard Methods of Accounting" or something of that sort, as the term is used?

A. They are.

Mr. Arndt: Just a minute. I object to that question as purely calling for an interpretation by this witness of a contract. I stipulate this is what the books show for the particular amount, and he has so testified.

Mr. Works: I will withdraw the question.

Q. Is this the form in which these net returns

(Testimony of Robert H. Graham.)

have been computed and approved by Haskins and Sells for the last 10 or 15 years?

A. Yes, sir.

Q. Would your testimony be the same as to the breakdown if——

The Court: You better introduce that and have it marked, counsel.

Mr. Works: Yes.

Mr. Arndt: May I ask a question first? [332]

Mr. Works: You may.

Voir Dire Examination

By Mr. Arndt:

Q. In making out this report, you first take in dollars and cents the gross receipts, isn't that correct? A. That is right.

Q. Then you take the dollars and cents of these various other items, and you get a dollars and cents net return, isn't that correct?

A. That is correct.

Q. Then when you have this net return, in order to get the net return from sales per hundredweight, does that hundredweight refer to sugar or does it refer to beets? A. Sugar.

Q. And that refers to sugar that is sold, is that correct? A. Sugar sold.

Q. Now, how is that tied into the beet production?

A. It is not tied in in any way that I can see.

Q. You have a certain figure that you get from Clarksburg, a certain net return. You have a certain

(Testimony of Robert H. Graham.)

net return that you get from Oxnard. Isn't that correct? A. That is correct.

Q. Then you apply that net return to the beets that were produced in the particular district, or do you apply it [333] to the beets that were processed in the particular district?

A. We apply it to the beets that are purchased under the contract in the particular district.

Q. So then the beets that were processed at Oxnard, but were produced in the Clarksburg district are not in any way applied to this net return that you show here?

A. You mean the sugar produced from those beets?

Q. Yes. A. No.

Mr. Works: May I have that question again?

(The question was read by the reporter.)

The Court: Is that marked?

Mr. Works: I think I am one behind, your Honor.

The Clerk: I think that is Exhibit G.

The Court: He was asking questions before this was admitted, and now I want to see what it is all about.

The Clerk: Is this a different one?

Mr. Works: Yes, that is 1942.

The Clerk: They will be G and H.

Mr. Arndt: Have you given me the next one, counsel? I have two here that are duplicates.

(Testimony of Robert H. Graham.)

Mr. Works: I am sorry. I thought I gave you both of them. Here is the other one.

The Court: Mr. Witness, I wish you would explain this a bit more to me so that when I get away from all these good [334] teachers, I will know what it may mean. Now, freight. You say in the year 1937 that represented a charge against the beets in that year for that amount.

The Witness: A charge against the gross receipts.

The Court: In other words, what I am getting at is this. Under 1937, you have freight on sugar to destination. You have two figures here.

The Witness: That is the total of these two. [335]

The Court: And then under the 1938 item you have .1912 and for 37 .287?

The Witness: Yes.

The Court: Do I get from that that the portion of freight in 1938 was less than in 1937?

The Witness: That is right.

The Court: That is what you are trying to demonstrate?

The Witness: Yes, sir.

Mr. Works: Here are the comparable figures for the three critical years, your Honor.

The Court: Well, we will want them.

Mr. Works: That is right. I am referring your Honor to the chart which is set out in the answer to Interrogatory 96.

Q. (By Mr. Works): I will ask you to examine that if you will, Mr. Graham. It consists of two pages. Your gross receipt figure on the first page and then

(Testimony of Robert H. Graham.)

the various deductions. Now, would your testimony be the same as to these computations of the returns?

Mr. Arndt: We have put in 96 as part of the interrogatories.

Mr. Works: That is what I am referring to.

The Witness: Yes.

Q. (By Mr. Works): And the freight items are shown in the same form across the table for 1939, 1940 and 1941, [336] is that correct?

A. That is correct.

Q. .438 and .387 and .322? A. Yes.

The Court: What was the first one?

Mr. Works: .438, your Honor.

The Court: And the others?

Mr. Works: Perhaps it would be helpful if we were to prepare a chart showing these right straight across.

Mr. Arndt: I intend to do that, your Honor.

The Court: Somebody is going to have to do it because I am not an auditor and in order to follow you I will have to have it.

Mr. Works: We will be glad to do it.

Q. (By Mr. Works): Now, the deductions from gross receipts shown on the exhibits I have just been referring to, and shown also in this answer to Interrogatory No. 96, represent charges which are made against gross receipts in order to determine the net, is that correct? A. That is correct.

Q. In other words, the greater the charge is the less the net as the same is used in the sugar table and vice versa, is that right?

(Testimony of Robert H. Graham.)

A. That is right.

Q. Now, is any charge made against the grower for [337] manufacturing expenses? A. No.

Q. Is any charge made against the grower for cost of beets? A. No.

The Court: Cost of what?

Mr. Works: Cost of beets—part of our manufacturing cost, your Honor.

The Court: Cost of beets?

Mr. Works: Cost of beets, yes. I see what your Honor has in mind. That is a term which is used in our bookkeeping.

The Court: I would like that explained so I can follow it.

Mr. Arndt: The cost of beets is what they pay the grower at the end of the year.

The Court: Isn't that a cost of doing business?

Mr. Works: I am leading up to this, if I may. There has been a good deal of testimony and remarks here about the shipping of beets from Clarksburg to Oxnard.

Q. (By Mr. Works): I will ask you how that item of expense, the freight paid on beets shipped from Clarksburg to Oxnard, is carried on the books of the company?

A. It is charged to freight account.

Q. And is it charged to manufacturing expense or to [338] cost of beets in any way?

A. Manufacturing expense.

Q. Manufacturing expense? A. Yes, sir.

(Testimony of Robert H. Graham.)

The Court: Is any part of that charged to the grower?

The Witness: No, sir.

Mr. Works: That was my next question.

Q. (By Mr. Works): The answer is none of it was charged to the grower, isn't that correct?

A. Correct.

Mr. Works: Do you have a copy of your 1941 settlement with Evans that I can use? I have the Zuckerman copy here.

Mr. Arndt: Yes. If I haven't it I will have it for you in the morning. I have it somewhere here. It is either here or in my office.

Mr. Works: I would appreciate it.

The Court: I imagine when you start looking for something it is a first class job.

Mr. Arndt: I will get it for you before the case closes.

Mr. Works: Well, I thought I would put in these settlement sheets each year to show the basis on which they actually were settled with at the time.

The Court: Are those copies? What I am getting at is if this is a copy why not use it. [339]

Mr. Arndt: He says he is only missing one of them and he wants me to furnish it and I told him I would as soon as I find it.

Mr. Works: I have Mr. Zuckerman and Mandeville here but not Evans.

Mr. Arndt: We will stipulate to them, counsel.

Mr. Works: All right. These show the utilization of the net return, if the court please, to the

(Testimony of Robert H. Graham.)

sugar tables in the contracts to produce the growers' payoff and these show the amount the grower received for each of these years and how it was computed. May I have these marked in evidence?

The Clerk: Separately?

The Court: Are you offering them as one exhibit?

Mr. Works: Either way, one exhibit will be all right.

The Clerk: Plaintiffs' Exhibit I.

Mr. Works: You may cross examine.

The Court: May I ask this question. Was part of this witness's testimony read into the record?

Mr. Works: Yes, your Honor.

Mr. Arndt: Yes.

The Court: Proceed.

Cross Examination

By Mr. Arndt:

Q. Now, referring to these Exhibits G and H and the corresponding Exhibits which were set forth in answer [340] to interrogatory 96, I call your attention to this item "Sales Department, Salaries and Traveling Expenses."

Now, isn't it correct that that includes the salaries and expenses of the western office and a portion of the salaries and expenses of the Denver office?

A. Yes.

Q. So that insofar as that particular item is concerned the greater the sales for a particular year the smaller will be the unit charge for that particular item?

A. Yes.

(Testimony of Robert H. Graham.)

Q. So that if the Clarksburg beets—I will withdraw that.

If the sugar that was produced from the Clarksburg beets that were shipped to Oxnard had been included in this tabulation the amount of miscellaneous sales department expense would have been smaller?

A. Any sugar you include there would make it smaller.

Q. And isn't that true—that also would be correct for each of the other items under sales and marketing expenses that you have here?

A. Not necessarily, no.

Q. As to which items wouldn't it be true and to which items would it be true, taking first this item of insurance on sugar only?

A. If you had more sugar included in the calculation [341] you would have more insurance premium and the division per bag might be greater or lower.

Q. Isn't that particular insurance—isn't that the insurance on sugar in storage only? A. Yes.

Q. Assuming that sales were actually made of the sugar that was made from the beets that were shipped to Clarksburg and shipped to Oxnard and there was no storage thereon then the non-inclusion in these schedules of those sales—

The Court: Now, counsel, just a moment. Isn't that dealing with the question of accounting—your other cause of action?

Mr. Arndt: That and also deals with the ques-

(Testimony of Robert H. Graham.)

tion of the use of the 1938, 1939 and 1940 single figures such as these are, on the basis of damages.

We contend, first, that the contracts are completely illegal and can't be used for any purpose. However, counsel says even though they are illegal they want to use them for the purpose of damages.

Replying to that we are endeavoring to show that they are not even proper for that purpose because here we have 15 per cent of the beets being shipped to Clarksburg—from Clarksburg to Oxnard as we will show when we present our figures, and yet none of that is included in these tabulations. [342]

The Court: That is your theory, that the contracts are void, but wouldn't that question be raised in the accounting feature and not under the antitrust feature?

Mr. Arndt: But Mr. Works insists——

The Court: Both of you are doing a lot of insisting but I am going to do some deciding one of these days.

Mr. Arndt: Mr. Works says the measure of damages is to take these figures as shown in 96, which are the American Crystal's individual breakdown. He wants to take those figures and subtract them from the joint figures and he wants to use that as the method for determining the damages. That is his theory.

The Court: You are each advancing your own theories as to this. Now, as to the figures you have them in evidence and I want to ask this witness a few questions and see if he knows the answers.

(Testimony of Robert H. Graham.)

Do you know anything about these contracts, the 1939, '40 and '41 contracts?

The Witness: Some, yes.

The Court: Do you know why they changed their method?

The Witness: No.

The Court: In the operation of your refinery it is a fact that you settle with the grower on the market price of sugar at the time you finish refining it, do you not?

The Witness: On the amount we receive from the sale [343] of the sugar.

The Court: Actual sales?

The Witness: Yes.

The Court: But very often you have a carry-over?

The Witness: That is right.

The Court: In other words, there is generally a carryover, is there not?

The Witness: Generally, yes.

The Court: That is through the years. In other words, you might produce, as you show here in one year a certain amount of sugar, when as a matter of fact instead of selling that exact sugar you would be selling some that was in storage?

The Witness: That is right.

The Court: And then you would settle with the grower on the basis of an equal amount of sugar from storage?

The Witness: Yes.

The Court: And the amount that you received?

The Witness: Yes, sir, the amount we sold during the year.

(Testimony of Robert H. Graham.)

Q. (By Mr. Arndt): Under the 1943 and 1944 contracts that was not correct. In 1943 and 1944 the Crystal Clarksburg contract which we put in evidence provided that the grower should be paid on the average net return from the crop produced during that crop year regardless of when sold. [344]

The Court: We are not talking about that. I am trying to find out what they did up until 1942.

You never then as a matter of fact settled with a grower on the exact sugar that he produced?

The Witness: No.

The Court: Of necessity you would not do that?

The Witness: That is right.

The Court: In other words, the grower wouldn't wait two or three years for you to sell the sugar as a rule?

The Witness: That is correct.

Mr. Arndt: That is what the 1943 and 1944 contracts provided, your Honor.

The Court: Then they were rich enough by that time to hold out. Ordinarily a farmer wants to turn his crop into money as soon as possible.

Mr. Arndt: Under these agreements this is what happened.

The Court: Has that been the method of handling the sugar during your entire experience with the company?

The Witness: No, years ago it wasn't.

The Court: What do you mean by "years ago"?

The Witness: We would settle on sugar produced in one year and sold during the crop year. There would be a carryover there. [345]

The Court: And settle when sold?

(Testimony of Robert H. Graham.)

The Witness: No, it did not enter into the calculation. That was 15 years ago.

The Court: What did you do in 1936, '37 and '38?

The Witness: It was all included in the computation—all the sugar sold within that 12 months, no matter which crop it was from was included in the calculations.

The Court: And that continued up until 1943 or 1944?

The Witness: Yes.

The Court: You may proceed.

Mr. Arndt: It continued in 1942, your Honor, and then in 1943 they had a different system and in 1944 and 1945 the grower was paid based upon production regardless of when sold. That is what the contracts show.

Q. (By Mr Arndt): Then in these particular computations that are here, these are based upon the sales during the crop year regardless of what carry-over there was at the beginning of the year or what carryover there was at the end of the year?

A. Yes; includes all the sales during the 12 months period.

The Court: In other words, as I understand it, it includes an equivalent amount of sugar?

The Witness: Yes.

The Court: That was produced? [346]

The Witness: Yes—no, no, not the equivalent of what was produced.

The Court: That was what you were paying for.

The Witness: No.

(Testimony of Robert H. Graham.)

Mr. Arndt: No, that is the vice of the whole situation. These are based upon the actual sales made during the year. In other words, supposing during the year there was a million pounds of sugar produced from a growers' particular beets produced during that year, but suppose they actually sold 500,000 pounds. They are paid on the 500,000 pounds regardless of what they produced. They are paid on the sales regardless of how much—

The Court: How are they paid for the other 500,000 pounds? As it is sold?

Mr. Arndt: No, they get nothing for that.

The Witness: Oh, yes.

Mr. Works: That isn't correct. I would like to have the witness dispel that illusion. Tell about the carryover.

The Court: Just a moment.

Mr. Arndt: If there is an increase in price on the carryover Crystal gets the full benefit of that and the grower gets nothing.

The Witness: That is not correct.

Mr. Works: Will you explain that to his Honor, please. [347]

The Witness: We will use Mr. Arndt's illustration. We produce 1,000,000 pounds of sugar. We sell 500,000 pounds in the first crop year.

Mr. Arndt: And I cease to be a grower.

The Court: Let the witness testify—be that courteous.

The Witness: That 500,000 pounds you sold would be the amount that you would calculate the

(Testimony of Robert H. Graham.)

net return on for that year. The 500,000 remaining would be sold in the next crop year and would enter into the computation for that crop year so the grower shares at some time in every bag we sell.

Mr. Works: And in the three years when the nets went up each year the grower was better off, isn't that it?

The Witness: Yes, sir.

Mr. Arndt: Take a situation in which the grower produced only in the crop year 1939 and produced nothing in 1940, would he have any share in the amount of sugar that was carried in 1940?

The Witness: No, but he would—maybe have a better share in the 1938 sugar that entered into the 1939 computation.

The Court: Just a moment. Let me see if I can understand you. Suppose in 1939 a grower produced and delivered to you beets that produced 1,000,000 pounds of sugar. In 1940 he didn't produce any. In 1939 you sold 500,000 pounds of that sugar that was produced in 1939. You would [348] settle with him on that basis, would you?

The Witness: That plus whatever 1938—

The Court: Suppose he just started to do business with you in 1939?

The Witness: I am talking about 1938 sugar that is sold. We don't know whether he produced it or not.

The Court: You don't know which grain of sugar is produced by one individual, but what I am trying

(Testimony of Robert H. Graham.)

to find out is this. As I stated you have sold only one-half of his sugar.

The Witness: Yes, if you tie it right down to that.

The Court: All right. You have only sold one-half of his sugar. In 1940 he produces no sugar but you sell the other half.

The Witness: Yes.

The Court: How is he paid for that other half?

The Witness: He wouldn't enter into that.

The Court: Wouldn't he get paid for it?

The Witness: He would get paid for his beets on the basis of all the sugar sold during the crop year of 1939. That included some 1938 and some 1939 sugar undoubtedly, and the 1939 that went over into 1940 would go to any new growers or old growers in figuring their net. It is a constant carryover from one year to another.

The Court: Then if a man is operating under one of [349] these contracts, either the 1938 or 1939 contract, and for just one year produced 100,000 pounds of sugar and in that year you sold only 50,000 pounds or one-half of it on the crop basis of that year, the next year supposing sugar advances a cent a pound, would that grower receive any of the benefits from that advance in price?

The Witness: Not if he didn't grow a crop in 1940, no.

The Court: On what basis would he be paid for the other half?

(Testimony of Robert H. Graham.)

The Witness: He would be paid on the carry-over from 1938 to 1939.

The Court: But he had none in 1938.

The Witness: No, but the sugar that was made in 1938 would enter into the computation for the 1939 to some extent.

The Court: That is too deep for me, gentlemen.

Mr. Works: Your Honor, he gets paid——

Mr. Arndt: That is exactly what we have been complaining about.

Mr. Works: Let us reverse your situation. Supposing the sugar market goes down the next year and he hasn't raised any that year, he doesn't lose either.

The Court: I am trying to figure out there their accounting method—how they account to the grower, but that [350] really has to do with the accounting angle of this case when you come down to it, but I am trying to as a matter of information find out if a grower furnishes beets from which is produced 100,000 pounds of sugar in that year and they—only sell one-half of it, how he is going to get paid for the other half. [351]

Mr. Works: He is selling beets, your Honor. He gets paid for every beet that he sells on the basis of what the sugar sold from that factory during that year brings. The carry-over of the sugar doesn't affect the fact that he has already been paid for his beets upon the basis of the current year's sales. Do I express that correctly?

The Witness: That is correct.

Mr. Works: Now, if he sells beets the next year

(Testimony of Robert H. Graham.)

and, say, the price goes up, he gets paid for those beets at what——

The Court: Suppose he just grows one year?

Mr. Works: All right. He is selling beets, that is the point, it seems to me, your Honor. He gets paid for every beet he sells, using as a yardstick this averaged net return from the sugar. If he doesn't sell the next year, if he doesn't grow the next year, he doesn't gain or lose or do anything else. He has already been paid for his beets.

The Court: Who gets the benefit if the price goes up?

Mr. Works: Who gets the benefit if the price goes up?

The Court: The increase.

Mr. Works: In that case, the processor would get the benefit, and if the price went down—and they go both ways all the time—then the processor loses. Furthermore——

The Court: If the price goes up, under your 50-50 contract, the refinery gets the benefit of half of it, doesn't it? [352]

Mr. Works: I don't know whether I am that good a mathematician. Is that right?

The Witness: Approximately, yes.

Mr. Arndt: That is right.

Mr. Works: If it goes down, what does he lose? Half of it?

The Witness: Half.

Mr. Works: Half. It is both ways. The point is, as far as this Sherman Act count is concerned,

(Testimony of Robert H. Graham.)

your Honor, you are perfectly right, because this has always been the way the yardstick has worked, both before and after these particular years.

Mr. Arndt: Pardon me. Not after, counsel. It was changed——

Mr. Works: Well, it wasn't changed in 1942, and there is no question in 1942. If they chose to use a different yardstick in 1944 or 1945, that is their privilege. There are a hundred ways in which you can determine the price, I suppose, and this is the way they were doing it from 1937 on through 1942, so it doesn't affect the Sherman Act count one way or the other, it seems to me. As your Honor says, there may be an accounting problem, but that depends on the contract determination.

The Court: Are you through with this witness?

Mr. Arndt: Yes.

Mr. Works : All right, Mr. Graham.

(Witness excused.)

The Court: We will recess until tomorrow morning at 10:00 o'clock.

(Thereupon, an adjournment was taken until 10:00 o'clock a.m., Friday, February 24, 1950.)

Los Angeles, California, February 24, 1950

10:00 o'clock a.m.

The Court: Call your next witness.

Mr. Arndt: May I ask Mr. Graham a few more questions, please?

The Court: I thought you would get an inspiration overnight.

ROBERT H. GRAHAM

the witness on the stand at the time of adjournment, being previously duly sworn, was examined and testified further as follows:

Cross Examination

By Mr. Arndt:

Q. Now, Mr. Graham, I want to show you a copy of Exhibit C. Now, this Exhibit C shows the American Crystal Sugar Company production and deliveries of Clarksburg factory sugar by crop years. Take this first crop year, 8-1-37 to 7-1-38. That is what is called the 1937 crop year, isn't it?

A. That is right.

Q. And here from 8-1-38 to 7-31-39 is the 1939 crop year? A. Yes.

Q. And so on? A. Yes.

Q. In other words, when we refer to a crop year of, [356] say, 1937, we mean a year commencing August 1 of 1937 and continuing to July 31 of the following year? A. Yes.

Q. On this particular list or schedule, the last column is headed "Total." Now, that last column which is headed "Total," does that represent the sum of the three previous columns? A. Yes.

Q. And then the column that is headed "Production" is not in any way totaled in reaching the total, but that is an independent item? A. Yes.

Q. Now, then, if we wanted to ascertain the per-

(Testimony of Robert H. Graham.)

centage of the deliveries for a given year that were Northern California, would we not take the last column, which is headed "Total" and divide that into the third column, which is headed "Northern California"? A. Yes.

Q. Now, have you made any calculations showing the percentage of Northern California deliveries for each of these years? A. No.

Q. But that is merely an arithmetical calculation, isn't that correct? A. That is correct. [357]

Q. Now, I will show you a copy of Exhibit D, which is called "Geographical Distribution of Sales of Clarksburg California Factory." Have you made any calculations showing the amount of freight that was paid on these sales to these various states?

A. No.

Q. Then, as I understand this particular chart, this shows the deliveries to each state for each year, each crop year, from 1937 through 1942?

A. Yes.

Q. And then at the bottom, where it says "Total," that represents the total for each respective crop year? A. Yes.

Q. Now, then, if we wanted to ascertain the percentage that the deliveries to any particular state bore to the total deliveries for that particular year, we would take the total as shown at the bottom and divide that into the amount shown for each particular state? A. Yes.

Q. And have you made any such calculations?

A. No.

(Testimony of Robert H. Graham.)

Q. Then that is merely an arithmetical calculation, isn't that correct? A. Yes.

Q. Now, then, looking at this Exhibit D, am I correct [358] that this shows that Illinois, Indiana, Maryland, Massachusetts and New York, for example, there were no sales there for 1937 or 1938 in any of those states, but there were sales in 1939, 1940 and 1941 to each of those states?

A. Yes.

The Court: May I ask a question? Just generally speaking, according to these charts, the amount of sugar that was sold locally is more or less constant?

The Witness: That is right.

The Court: When you have heavy production, that means sugar has to be shipped out of this area?

The Witness: Yes.

The Court: And that the heavier the production, the greater your freight will be? That is what you are trying to show by these charts, is it not?

The Witness: I don't know exactly, but that would be the effect of it.

Mr. Works: That is correct, your Honor, yes.

Q. (By Mr. Arndt): Now, taking the percentage of sugar that was sold in California during the years 1937 and 1938, where the total sales were \$423,268 and \$390,385, the percentage, take for the year 1937 and take your figure of \$253,997.00 for Northern California out of a total production of \$423,268, can you give a rough figure of the percentage that that bore? A. About 55 I would say.

(Testimony of Robert H. Graham.)

Q. And then for the year 1938 where California was \$287,730 and a total of \$390,385?

A. Approximately 60 per cent.

Q. Then for 1939 where it was \$267,508 for California against \$816,561?

A. 30 per cent approximately.

Q. Then for 1940 where the California sales were \$314,263 and the total was \$723,685?

A. About 40 per cent.

Mr. Works: Give us the percentage for '41. You don't have the exhibit?

The Witness: No.

Mr. Arndt: He said he made no such calculations, counsel. I asked him.

Mr. Works: Are you through with the witness?

Mr. Arndt: Yes, that is all. [360]

Redirect Examination

By Mr. Works:

Q. Now, will you make the same kind of calculation for 1941 where the total was \$1,054,489 and the California figure was \$516,178 bags?

A. Around 50 per cent.

Mr. Works: Thank you. May I reopen yesterday's direct examination, your Honor?

The Court: Certainly.

Q. (By Mr. Works): You were asked yesterday, Mr. Graham, about the allocation of the Denver sales office expense to Clarksburg and to the various mills of the company.

Now, how is that done? Is it done on a basis of

(Testimony of Robert H. Graham.)

volume of sugar manufactured or what is the criteria?

A. It is divided on the basis of bags sold by each plant.

Q. So if 100 bags only were sold out of Clarksburg in a given year its allocation to the Denver office expense would be quite small, is that true?

A. Yes, sir.

Q. Thank you.

Mr. Arndt: Just one minute.

Recross Examination

By Mr. Arndt:

In connection with the expenses of the San Francisco [361] office, were all of those charged to Clarksburg? A. No.

Q. Where were they charged?

A. To Clarksburg, Oxnard and to the Missoula, Montana plant.

Q. In what ratio?

A. The bags sold from each plant.

Q. You mean bags of sugar? A. Yes.

Q. In other words, all the sales expenses of that office were charged to sugar? A. Yes.

Q. Was any of it charged to molasses?

A. No.

Q. It handled molasses sales, did it not?

A. Some, yes.

Q. Also handled pulp sales, didn't it?

A. No.

Q. But it handled molasses sales? A. Yes.

Q. But none of the expenses of molasses sales

(Testimony of Robert H. Graham.)

were charged to molasses but all the expenses involved in the molasses sales were charged to sugar?

A. Yes.

Mr. Arndt: That is all. [362]

Mr. Works: Thank you, Mr. Graham. Mr. Holmes, please.

LESTER J. HOLMES

called as a witness by the defendant, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Lester J. Holmes.

Direct Examination

By Mr. Works.

Q. Where do you live, Mr. Holmes, please?

A. Clarksburg, California.

Q. And what is your business or occupation?

A. I am manager of the American Crystal Sugar Company at Clarksburg.

Q. The Clarksburg plant?

A. Yes, the Clarksburg plant.

Q. How long have you been manager of that plant? A. Since 1934.

Q. And that was at a time when it was operated by another company?

A. Operated by the Amalgamated Sugar Company.

Q. And when did it become an American Crystal Sugar Company plant?

A. During the 1936 season.

Q. Now, have you had occasion to grow beets yourself prior to becoming manager of the plant?

(Testimony of Lester J. Holmes.)

A. Yes. I started growing beets in 1921.

Q. And where?

A. In the Holland district of Clarksburg.

Q. How long did you continue growing beets, Mr. Holmes?

A. I continued actively until I became manager of the American Sugar Company at which time I employed my brother to handle the operations and then later leased the property and am still leasing the property now to my boys who carry on the operation.

Q. Well, then, is it correct to say that as a beet grower you have sold beets to factories and as a factory manager you have bought beets from growers?

A. That is right.

Q. Now, I wonder if you would explain to his Honor how sugar beets were bought and sold during the years 1937 to 1942 without reference to the question of whether a single or a joint net was employed in the payoff?

Mr. Arndt: If the court please, we have in evidence the contracts during that period. If this is an attempt to vary the contracts I object to it.

The Court: I don't think that is the purpose. I think it is preliminary, is it not?

Mr. Works: Exactly.

The Court: To give the court a little background.

Mr. Works: That is correct, your Honor. [364]

Mr. Arndt: Just a minute. I make the further objection that the contracts are the best evidence as to how the beets were bought and sold.

Mr. Works: I was under the impression that it

(Testimony of Lester J. Holmes.)

was your thought that the 1939, '40 and '41 contracts were void.

Mr. Arndt: They are.

Mr. Works: The matter is still preliminary, your Honor.

The Court: What do you say about that, Mr. Arndt? You say they didn't have contracts for those three years.

Mr. Arndt: He is asking about 1937 to 1942. There is no question that the beets were bought and sold under the contracts. The contracts during certain of those years were void but nevertheless that is how they were sold.

The Court: Well, you can't stand on your contracts in one instance and refuse to in another. I don't know the purpose of this. I presume it is preliminary in an effort to advise the court as to the general method used, the same as you asked your grower yesterday about the growing of beets and how it was necessary to prepare the soil and plant the seed and cultivate and thin and weed and harvest them and the different methods. I don't think this is any more immaterial than that.

Mr. Arndt: Your Honor, I am not saying it is immaterial. I say it is an attempt——

The Court: I don't think it is an attempt to vary the [365] terms of the contract.

Mr. Arndt: Then the contracts are the best evidence.

The Court: The contracts are the best evidence of the method of sale, but if your position is correct they

(Testimony of Lester J. Holmes.)

had no contracts for those three years and then this line of questioning may go to what was the practice and custom in the industry.

Mr. Arndt: But during those three years, your Honor, they actually did use these contracts.

The Court: They used them but your theory is if there had been no contracts you would have gotten a different price and they are trying to show that you wouldn't have gotten a different price. I am going to overrule the objection.

Mr. Works: Will you read the question, please, Mr. Reporter?

(The question referred to was read by the reporter as follows:

“Q. Now, I wonder if you would explain to his Honor how sugar beets were bought and sold during the years 1937 to 1942 without reference to the question of whether a single or a joint net was employed in the payoff?”)

The Witness: There are really three factors in the determination of the contract. The first is the ability of the company——

Mr. Arndt: If the court please, he is now going into [366] something entirely different. He is now going into the mechanism of how the company arrived at certain figures set forth in the written document, which is not what the question called for at all, and is purely his conclusion and is entirely hearsay. There is no foundation whatsoever laid for any such matter. [367]

(Testimony of Lester J. Holmes.)

The Court: Counsel, you can make a motion to strike whatever is in the record, but there has been so much evidence introduced here that you introduced in your part of the case and I admitted, that I think I should be just as courteous to the other side and permit them to put in a case on their theories. Then I will try to see if I can work something out of it. I don't know if it is material or not.

It is true, there have been so many documents introduced here and stipulations of fact, that I haven't had an opportunity to read them. There have been depositions that I haven't been able to read or haven't had the opportunity to read as yet. There is a truck-load of exhibits.

In order to be fair to both sides, I think both sides should be permitted to place their case in on their own theory, and then when we get through, I will have my own theories. I probably won't agree with either one of you, at least 100 per cent.

Q. (By Mr. Works): Do you have the question in mind?

A. The next factor in the purchase of beets is the sales price of sugar during a certain period which the contract calls for.

The next factor is the amount of sugar in the beets purchased. Those two factors determine the amount that the growers receive, the average sales price for the year, plus the sugar content in the beets.

Q. In purchases made by American Crystal from Mandeville Island Farms Company and from Mr.

(Testimony of Lester J. Holmes.)

Zuckerman, where was delivery of the beets taken by American Crystal?

A. At a dump on the island where the beets were grown.

Q. That is on Mandeville Island?

A. On Mandeville Island, in the case of Mr. Zuckerman.

Q. Where was delivery taken of Mr. Evans' beets?

A. On a dump on what we called American Island.

Q. From time to time during the years 1937, 1938, 1939, 1940, and 1941, were certain beets which had been delivered to the company at Clarksburg or in the vicinity, shipped to Oxnard? A. Yes.

Q. To the company's plant at Oxnard?

A. To the company's plant at Oxnard.

Q. Did you have anything to do with making the determinations as to whether these beets should be processed at Clarksburg or, on the other hand, should be shipped to Oxnard?

A. I had that—originally, the plan was in consultation with Mr. Rooney and the Denver office and myself, as to whether or not we should transfer and as to the general amount, but during the actual transfer time, it was my direction of whether or not the beets went to Oxnard or whether they came to [369] Clarksburg, depending on the operation capacity of the plant at Clarksburg.

Q. You mentioned Mr. Rooney. For the record, who is he?

(Testimony of Lester J. Holmes.)

A. He is manager of the plant at Oxnard.

Q. What factors did you take into consideration in deciding that a certain shipment of beets should be made from Clarksburg to Oxnard?

A. There are several factors. First, if we had more beets than what we could efficiently handle at Clarksburg, in order to get through harvest before the winter rains set in, we made an over-all estimate of the beets to be shipped to Oxnard. If during this period of shipment, rains would interfere with our normal deliveries to Clarksburg and it looked like our slicing capacity would go down, beets would be diverted from the shipments to Oxnard to Clarksburg.

Q. Who paid the freight on those beet shipments from Clarksburg to Oxnard when they were made?

A. American Crystal.

The Court: Just a moment. Counsel, you have examined the record. Is there any dispute about that?

Mr. Arndt: No, your Honor.

Mr. Works: Is there any dispute about the fact that no part of the freight cost is charged to the growers? [370]

Mr. Arndt: No dispute.

Mr. Works: All right.

Q. Now, were any shipments made from Clarksburg to Oxnard in 1942? A. No.

Q. Will you state the facts as to why no such shipments were made?

A. I will state that, preliminary, we were making arrangements as early as March to ship beets to Oxnard. Then later in the spring, due to war conditions

(Testimony of Lester J. Holmes.)

and notice from the railroads that there would not be cars available for such shipment, we had to forego any shipments to Oxnard and work out another system.

Q. There has been some talk about bonuses given the growers in 1942. Did that bonus situation have anything to do with this railroad car shortage?

A. That, and labor, shortage of labor.

Q. State the facts as to what led to the payment of the bonuses in 1942.

A. We had a rather heavy crop coming on, and by reason of the fact that we could not ship beets to Oxnard on account of the railroad situation, shortage of cars, and so forth, and also by reason of the fact that our agricultural labor had gone into other industry, we could see that we could not complete harvest under normal conditions before the [371] rains set in, so we set up a bonus for early delivery, having in mind compensating the growers who were delivering to us, probably, when the beets were a little underripe, to compensate them for their loss in sugar for that early delivery.

Q. And what bonuses were given as to amount, do you remember?

A. I believe we paid \$1.00 from July 28 to August 1st, and from August 1st to the end of that week, 70 cents, and from the 10th to the 15th, I think it was 35 cents.

The Court: For what? A ton?

The Witness: Per ton.

(Testimony of Lester J. Holmes.)

The Court: Had you ever paid a bonus before that?

The Witness: No.

The Court: It was only during the war period you paid the bonus?

The Witness: Just during the year 1942.

The Court: Just the one year?

The Witness: We paid—if I may go to 1943—we paid just the opposite. We paid the growers to hold off for a month, rather than for early delivery. It was just the absolutely opposite condition.

The Court: Had that practice ever prevailed prior to the war?

The Witness: No. We were able to handle all of our [372] beets under normal conditions.

Q. (By Mr. Works): Is it correct to say, Mr. Holmes, that the conditions which led to the payment of these bonuses in 1942 did not exist in 1937, 1938, 1939, 1940 or 1941?

A. That is right.

Q. Now, yesterday we had some discussions about this carry-over of sugar from one crop year to the next. Had that situation had some historical development, Mr. Holmes? A. Yes, it had.

Q. Does the expression "free sugar" mean anything to you?

The Court: What is that expression?

Mr. Arndt: Free sugar.

Mr. Works: Free sugar, your Honor. There has been a certain development, which I think the other

(Testimony of Lester J. Holmes.)

side may or may not have in mind, and I would like to have Mr. Holmes explain it, if he can.

Q. There was a change in the method of handling carry-over sugar some time before these years in question, was there not? A. That is right.

Q. Will you state the facts in that respect, please? You have been on both sides of the fence, as a grower and as a buyer, so please tell us about it.

A. During the years previous to the contract, which was [373] established by the Amalgamated Sugar Company at Clarksburg, there had been a practice in certain competitive companies, the practice of setting aside all sugar held over at the end of the year, of the crop year. That sugar was considered theirs and called free sugar.

Q. You mean they closed their books by charging themselves for that sugar and regarded it as theirs from then on? A. As theirs.

Q. All right.

A. Then in the following year, or whenever they felt free to sell it, that sugar could be sold or would be sold at a certain price, the highest in the year probably, in the most favorable territory, and no accounting whatever was given to the growers for that sugar. That was called free sugar and was strictly a company affair.

The Court: What do you mean? The company kept all the sugar it did not sell?

The Witness: That is right.

The Court: And the grower only got paid for what they sold?

(Testimony of Lester J. Holmes.)

The Witness: No. The growers got paid for all of the sugar they handled.

Q. (By Mr. Works): All of the beets, you mean?

A. They got paid for all of the beets. In some cases, now, we are running off with a wrong premise, because [374] the grower is paid for the beets, not for the sugar.

The Court: I know, but your price on beets is governed by the price of sugar, and the sugar content of the beets.

The Witness: That is right.

The Court: So that under the old system, whether you sold them or not, the particular grower got his money.

The Witness: That's right, he got his money, but he did not get the advantage of this carry-over sugar.

The Court: In other words, he did not get any advantage of any fluctuation in price.

The Witness: In the next year. When the contract under which we now operate was put into force, it particularly specified that the sugar sold during that year enter into the computation of the net to the grower, and that practice has been carried on up to this time.

Q. (By Mr. Works:) Now, that is sugar manufactured at that plant and sold during a given year; that is the situation, is it not?

A. The sugar sold during a given year. ..

Q. That setup has the effect of stopping this free sugar practice, as far as the companies are concerned?

A. That is right.

(Testimony of Lester J. Holmes.)

Q. How?

A. By any carry-over that is held over after the end of the previous crop year being taken into consideration as the [375] sales during the next year. So if the price of sugar goes up, the grower who is growing it that year benefits from it. If the price of sugar goes down, in the same way he is penalized.

Q. In the old days he had nothing whatever to do with the following year, as far as his current crop of beets is concerned, is that it?

A. As far as participating in the——

Q. Under the free sugar part?

A. Under the free sugar part.

Q. If we apply that situation to Mr. Zuckerman, he sold in 1939, 1940 and 1941, and the record shows that starting with 1939, 1940 and 1941, the nets went up. That means that as to subsequent deliveries of beets, coupled with any of his sugar which was carried over into the following year, he shared in the price increases for that?

A. That is right.

Q. He got the benefit of them as applied to his next year's crop of beets, is that right?

A. That is right.

The Court: As a matter of fact, under that system, on the crop he sold in 1939, would he not profit by any increase in prices from 1938?

The Witness: That is right, yes.

Q. (By Mr. Works:) Do you have anything to do with the [376] sale of sugar, Mr. Holmes?

A. None whatever.

(Testimony of Lester J. Holmes.)

Q. You are acquainted with the plaintiff, Roscoe Zuckerman, also president, that was, of Mandeville Farms Company? A. Yes.

Mr. Arndt: He still is, counsel.

Mr. Works: Is he still president?

Mr. Arndt: Yes.

Mr. Works: All right. I didn't know his present status.

Q. Did you have a conversation or conversations with Mr. Roscoe Zuckerman about the joint net contracts prior to the time when he signed the first one in 1939? A. I did.

Mr. Arndt: Just a minute, counsel. The first contract he signed was in 1937.

Mr. Works: I am talking about the first joint net contract that he signed.

Mr. Arndt: Pardon me.

Q. (By Mr. Works:) Do you recall where that conversation took place?

A. I couldn't specifically recall whether it was on Mandeville or whether it was in his office, no.

Q. Was anyone else present, do you recall?

A. I couldn't say. [377]

Q. What did you and he talk about with reference to the joint net contract?

A. Well, generally, the conditions that would prevail.

The Court: Tell us in substance what was said.

The Witness: Well, I presented it to him that we were going from here on on the joint net contract. He agreed to go along, but felt that he would a whole

(Testimony of Lester J. Holmes.)

lot rather have gone along with us on a single net, rather than a joint net. I think that is the gist of the conversation.

Q. (By Mr. Works): This was before he signed his first joint net contract in 1939?

A. Yes.

The Court: There wasn't anything else for him to do, was there?

The Witness: Well, not necessarily.

The Court: He owed you a lot of money, didn't he?

The Witness: Yes, but—

The Court: What could he have done?

The Witness: He could have gone with Holly or Spreckels.

The Court: How could he have gone with them without settling up with you? I mean as a practical matter.

The Witness: Well, as a practical matter, yes.

The Court: As a practical matter, he was your customer and you had him tied up until he could pay you off. [378]

The Witness: I will agree to that for practical purposes.

Mr. Works: Cross examine.

The Court: Do you know anything about the arrangements by which they made this change over to joint return?

The Witness: Just this much, your Honor. It has a—I don't know the actual details, no, but I do know that it has an historical background, of which

(Testimony of Lester J. Holmes.)

our company had two or more factories in the East, where it was in operation. The growers were happy under that deal.

There is another company, however, one company operating 17, 18 factories, scattered through three states, which uses the joint net for all factories. Then American Crystal and Holly in Southern California were using that joint net.

The Court: Was that before they used it up North?

The Witness: That was before they used it up North. So that we just naturally, I suppose, transferred it up North, drawing in with the Spreckels and Holly production.

The Court: Do you know who made arrangements with Holly and Spreckels to join in this contract?

The Witness: I do not.

The Court: You didn't have anything to do with that?

The Witness: I didn't have anything to do with it.

Q. (By Mr. Works): As I understand your historical background—[379]

The Court: You mean as to the practice?

Mr. Works: I beg your pardon?

The Court: It has been in practice in other cases. [380]

Q. (By Mr. Works): Yes. Am I correct in understanding that it had its inception in a situation where one company was operating two or more mills and they adopted this plan to put their growers on a parity? A. That is right.

Q. Their own growers?

(Testimony of Lester J. Holmes.)

A. Their own growers.

Q. And then it spread to other growers?

A. Yes, sir.

Cross Examination

By Mr. Arndt:

Q. Mr. Holmes, the only case you know in which two competing companies went into a deal like this was the Southern California and the sole situation involving Crystal and Holly, isn't that correct?

A. Competing companies? Yes.

Q. And then other examples that you gave were similarly a case of one company having several factories and the one company having several factories had a joint return for its own factories but not for any competing company?

A. That is right; but at the same time they were scattered way out to where each individual factory undoubtedly had its own net.

Q. Now, to discuss this situation in 1939 and 1940 and 1941, isn't this a correct statement, that if a grower delivered [381] exactly the same tonnage in 1938 as he did in 1939 and in 1941 and in 1942 then he would get the benefit of any rise in price by getting it on his subsequent crop for the former crop, but that if he raised a smaller amount in the subsequent years than insofar as the difference was concerned between what he produced in 1939 and what he produced in 1941 he received no benefit of the increase, isn't that a correct statement? A. No.

The Court: In the first place, counsel, where does that have anything to do with this antitrust suit?

(Testimony of Lester J. Holmes.)

Mr. Arndt: Your Honor, this is in connection with the questions that he was asked in which he testified that Mr. Zuckerman received the benefit.

The Court: That is the accounting feature of the case. We have gone into many matters touching on the accounting feature, but when we come right down to it we are not trying that feature. The method for payment that we have been discussing for some time is no part of the conspiracy.

Mr. Arndt: That is correct, but it shows this, your Honor, it shows that this company profited tremendously on these large quantities of Zuckerman beets because Zuckerman or Mandeville produced so much more in 1939 than it did in 1940 and 1941 and insofar as that increase was concerned — this decreased production, it lost all advantage of any price increase [382] by virtue of this system and as far as the last year was concerned it lost even more.

The Court: But Mr. Arndt, I have been getting a rather free education here on the subject and the sugar problem. It is probably essential to a correct understanding of this case and it has been very interesting, but when you come down to the issues that we are now trying, and that is any damages sustained, if you can't prove damages you are out on a limb anyhow, so it is essential for you to prove that.

Now, where does that tend to prove or disprove damages by reason of these three years when it was a practice in the industry?

Mr. Arndt: If the court please, it might be the practice in California during certain of those years

(Testimony of Lester J. Holmes.)

but the contracts show that the witness was in error for subsequent years, because in the years the contracts were put in evidence, the evidence shows that for the year 1945, and I think for the year 1944, they used an entirely different system which I intend to examine this witness regarding because he has made the statement that it has been used right along and he is mistaken. The documents show the contrary. That was one of the very reasons at the start I objected because I felt he was going to testify contrary to what the documents showed.

Mr. Works: Well, in justice to the witness he was asked about the years 1937 through 1942, your Honor. [383]

Mr. Arndt: And then he was asked whether it continued since that time and he said yes, and it hasn't continued since that time as the documents themselves show.

The Court: Well, the contracts speak for themselves. As long as Crystal and the growers were dealing with each other free from any agreement or conspiracy they were both free agents and this act only covers those who conspired—the combination.

Mr. Arndt: That is correct.

The Court: So when you narrow it down what happened before and what happened afterwards is immaterial. There was no claim of conspiracy for those years. I have permitted evidence to be introduced along those lines under one of your theories on damages but only to that extent.

Mr. Arndt: The contracts in evidence show that

(Testimony of Lester J. Holmes.)

Crystal had two contracts prior to 1939 and one for 1937 and one for 1938. Its predecessor had contracts before that. Then subsequent it had several contracts. The contracts for 1937 and the contract for 1938 and the contract for 1942 were more or less similar. The contract for 1943 was entirely different because of certain Government controls and so on. In 1944 and 1945 the growers were paid based upon the sugar that was manufactured regardless of when sold. He received the full benefit of any price increase.

The Court: How would that be material in this case? [384]

Mr. Arndt: It shows again the result of free competition. We have free competition after it was over resulting in this different type of contract which instead of the company getting the benefit of the increase when a grower stops delivering, as your Honor pointed out yesterday, if a grower delivers only one year and doesn't deliver the second year the company gets the benefit—gets 50 per cent of the benefit of the price increase and the grower gets none and the other grower gets the other 50 per cent, but he gets none of it.

Now, that was the condition during 1939, 1940, 1941 and 1937 and 1938 and 1942. But it was not the condition in 1943, 1944 and 1945.

The Court: Counsel, let us be fair about it. During the war years I don't know whether there was free competition or not. It is a matter of common knowledge that prices and everything else were under Government control.

(Testimony of Lester J. Holmes.)

Mr. Arndt: But there certainly was competition so far as getting growers was concerned.

The Court: They were still controlled. The price of sugar would necessarily control the grower as to the price that he would receive for his beets.

Mr. Arndt: That is correct, but the grower had a choice of which company he would grow for and a choice of whether he would grow for Crystal that paid this type of bonus or for Holly which paid another type of bonus or Spreckels which paid a third kind or didn't pay a bonus at all. He had a [385] choice of where he would go. He had the choice of whether he would sign a contract.

The Court: Counsel, as I told you several times it is easier to let you go ahead than argue with you. I have been pretty free in admitting evidence in this case but I certainly am not going to be controlled by what happened in 1945.

Mr. Arndt: Unfortunately——

The Court: I am not going to argue with you. That is my ruling. From now on I am going to rule and will not listen to any more argument. I think you are over-playing your hand in that respect.

Q. (By Mr. Arndt): Now, referring to a grower who produced beets during the year 1939 and produced no beets whatsoever during 1940, would he receive any benefit of any increase in price?

A. He had been paid entirely for his beets for the 1939 season according to the contract, and naturally he has no more interest in any sugar. We have bought the beets and paid for the beets according to the sugar

(Testimony of Lester J. Holmes.)

content of those beets at the prevailing average price for the year. May I draw a comparison?

Q. So that your answer than to my question is that he would not benefit by the increase, if any, in the price of sugar? A. That is correct. [386]

Q. And that same answer would be if he grew only in 1940 and didn't grow in 1942, or, pardon me, didn't grow in 1941?

A. That is right. He has been paid entirely for all the beets produced and delivered during that year according to the average price per year by the contract.

Q. And that was based upon the actual sales that took place regardless of what the carry-over might have been? A. That is right.

Q. Now isn't it a fact that during certain years subsequent to 1941, the contract was changed so that the grower did receive a payment based upon the sugar manufactured during the crop year regardless of when sold?

A. I don't quite interpret it that way. During Commodity Credit Corporation period when the Commodity Credit Corporation was in the picture, they issued certain edicts which were beyond the power of the company to determine and all those details I am not familiar with.

The Court: Let me ask this question. As far as Crystal was concerned if there was an increase in price you would get 50 per cent of the benefit of that increase whether the grower got it or some subsequent grower received it, would you not? In other

(Testimony of Lester J. Holmes.)

words, would it make any difference in the profits of your company?

The Witness: No. Well, I will put it this way: All [387] the sugar sold during the calendar year was taken into account and the grower received 50 per cent, approximately 50 per cent of the sales price of the entire amount during that year.

I would like to say this, your Honor, that when we bought those beets at the dump they were our beets. We could take them out and sink them. We could take them—and we did lose a barge. We could take them up to Clarksburg and process them. We could ship them to Oxnard, whichever we felt was the necessary thing to do. The same thing prevailed if a carload of potatoes were sold from Mandeville, it makes no difference to Mandeville whether they go to Texas or Los Angeles or go to alcohol or cattle feed. He has made a sale and we figure the same way on the sugar beets.

The Court: What I am getting at is this. As I understand the method that prevailed during 1937, 1938, 1939, 1940, 1941 and 1942 and maybe after that and maybe before, the sugar that was sold the grower received payment in accordance with the amount of the sugar that was extracted from the beets.

The Witness: Yes.

The Court: Now, there has been some talk here and considerable of it, and the court may have participated in it, that a grower—and you were in court yesterday when we were discussing this——

(Testimony of Lester J. Holmes.)

The Witness: Yes, sir. [388]

The Court: A grower of 500,000 pounds of sugar sold only half of that amount during one year would result in a carry-over.

The Witness: Yes, sir, that is right.

The Court: Now, if the price went up the grower for the year that the sugar was sold in would get the benefit of that increase?

The Witness: On the pro rata of the sales of that year, yes. They would be added into that sales year.

The Court: The grower would get the benefit of 50 per cent of that increase, would he not?

The Witness: The growers growing that year would get the average price of all the sugar. It may not be, when you come down to the average price, it may not be 50 per cent. It may have gone up four bits—yes, the average over the year, the grower would get two bits and the company would get two bits.

The Court: What I am trying to ascertain is this, whether under this system it may have been to the disadvantage of a grower who only produced beets for one year but to the advantage of the company.

The Witness: I don't think it resulted in any advantage to the company whatever.

The Court: You may proceed.

Q. (By Mr. Arndt:) Mr. Holmes, in reply to a question [389] by the court you referred to the calendar year. Didn't you mean the crop year indeter-
mining the return?

(Testimony of Lester J. Holmes.)

Mr. Works: I assumed that.

The Witness: If I did I should have referred to the crop year.

Q. (By Mr. Arndt:) Crop year? A. Yes.

Q. Now then, as I understand it the crop year runs from August 1st to July 31st?

A. That is right.

Q. So that if American Crystal had a certain amount of sugar on hand in July and had to consider whether it would sell that sugar or not, if it sold that sugar in July of 1938 then that sale would be reflected in the return for the 1937 crop, isn't that correct?

A. If it was sold in July of 1938?

Q. Yes. A. Yes.

Q. But if it was not sold until August of 1938 it would then be reflected in the 1938 crop?

A. That is right.

Q. And the accounting for the '38 crop came on between August 1st and August 30th of 1939?

A. The adjustment for payment, yes.

Q. So then the question of whether, for example, the [390] sugar could be sold in the last week of July or the first week of August of a given year would determine two things: First, whether that would be reflected in the one crop year or the other and, second, whether Crystal would pay for that in the following August or August a year later, isn't that correct?

A. That is an accounting practice, yes.

Mr. Arndt: That is all.

(Testimony of Lester J. Holmes.)

Redirect Examination

By Mr. Works:

Q. Mr. Holmes, on this matter of the relationship between the grower and the company, the effect is, is it not, to split the sales cost on an approximately 50-50 basis? A. That is right.

Q. On the other hand the company bears 100 per cent of the manufacturing cost and of the cost of beets, isn't that right? A. That is right.

Q. That comes out of its revenue?

A. That is correct.

Mr. Works: Thank you.

Recross Examination

By Mr. Arndt:

Q. And the grower pays 100 per cent of the growing and harvesting cost on his part? [391]

A. That is right.

Q. Okay.

The Court: That is all.

Mr. Works: Mr. Hayden.

The Court: We will take our morning recess at this time.

(Short recess) [392]

The Court: You may proceed, gentlemen.

Mr. Works: Mr. Hayden, please.

J. B. HAYDEN

called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

(Testimony of J. B. Hayden.)

The Clerk: Will you state your name, please?

The Witness: J. B. Hayden.

Direct Examination

By Mr. Works:

Q. Where do you reside, Mr. Hayden, please?

A. Denver, Colorado.

Q. What position do you hold with the American Crystal Sugar Company?

A. Executive vice president.

Q. What position did you hold with them during the years 1937 through 1942, please?

A. Eastern sales manager.

Q. What were your duties in that connection?

A. To negotiate the sale of sugar in the eastern area.

Q. You say you were the eastern sales manager. Does that imply there was a western sales manager?

A. Yes, sir.

Q. Who was he? A. M. W. Hardy. [393]

Q. What was his sales territory as compared with your own? Do I understand that there were just the two of you? A. That is right.

Q. There was no southern manager, or anything of that sort? A. No.

Q. All right.

The Court: He testified in the deposition as to the five western states so, of necessity, he must have had the balance.

Is that true?

The Witness: That's right, sir, except Mr. Hardy also has charge of western Montana and Idaho.

(Testimony of J. B. Hayden.)

Q. (By Mr. Works:) At that time, was Missoula in operation? A. Yes.

Q. He had three mills in his territory?

A. That's right.

Q. Missoula, Clarksburg, and Oxnard?

A. Yes.

Q. How many mills did you have in your territory? A. I had five.

A. Where were they?

A. At Grand Island, Nebraska; Rocky Ford, Colorado; [394] Mason City, Iowa; Chaska, Minnesota, and East Grand Forks, Minnesota.

Q. Did each of those mills, his as well as yours, have what is known as a normal sales area?

A. Yes, sir.

Q. Will you explain to his Honor what you mean by a normal sales area, please?

A. Well, a normal sales area is that area closest, freightwise, to each factory.

Q. Is it correct to say that it means approximately the distance a mill can sell on a destination basis without absorbing freight?

A. Well, there is some absorption regardless of how close you are. For instance, if you sell from Clarksburg, in San Francisco there is an absorption.

Q. Does that bear a relationship to the cane sugar price base at San Francisco? A. Yes, sir.

Q. What is the inter-relationship, if any, as between cane sugar prices and beet sugar prices? Take San Francisco as an example.

(Testimony of J. B. Hayden.)

A. Well, historically, the cane refiner has established the price on sugar.

Q. That is a point of import for him, is that correct? [395]

A. Yes. He figures the cost to him of his raw sugar and a spread for refining, and establishes the price on that basis.

Q. As far as the domestic use of sugar is concerned, has there been a historical differential as between cane sugar and beet sugar? I am talking now about sales to the housewife for domestic use?

A. Yes.

Q. Can you give us an approximation of what that has been and what it was during these years?

A. Well, it has varied by areas. In the Pacific Coast area, it has generally been 10 cents. In the eastern area, it varied between 10 cents and 20 cents.

Q. Has the competition of the beet sugar people with the cane sugar people in manufacturing uses, such as canning, had any effect upon such a differential?

A. Yes. The cane people have sold sugar to the canning trade and the large manufacturing trade at the same price as beet.

Q. Is it correct to say they have been forced to come down to meet the beet price?

A. Yes. When we established a price, say, 10 cents under the cane price, they reduced their price to that class of trade.

The Court: The housewife, historically speaking,

(Testimony of J. B. Hayden.)

as you [396] gentlemen have been speaking here, has always looked upon cane as preferable.

The Witness: That is right, sir.

Q. (By Mr. Works): Is it correct to say that the normal marketing area of a beet sugar mill is the area within which it receives its highest net price?

A. That is right.

Q. You sell at destination prices, do you not?

A. That is right.

Q. And if you were to sell, say, at Seattle, the destination price at Seattle would be the price base plus freight to Seattle, is that correct?

A. That is right.

Q. So that the total of the price base and freight would be reflected in your gross receipts as being the sales price received, is that correct?

A. That is right.

Q. And the freight——

The Court: Just a moment. Let's see if I understand that. Your base price is based on San Francisco?

The Witness: Well, there is a base price in San Francisco.

The Court: For instance, there is a base price in San Francisco. Does the Seattle man pay the base price in San Francisco plus freight, or do you pay it? [397]

The Witness: He pays it, plus freight. He pays the price at Seattle, plus the freight. We prepay the freight, but it is added to the destination price.

(Testimony of J. B. Hayden.)

The Court: In other words, the party to whom you sell, as the net result, pays the freight?

The Witness: Pays the freight and the price, the destination price.

The Court: So that sugar at Seattle would be higher than it is at San Francisco?

The Witness: That is right. If we sold some sugar in San Francisco, we would pay the freight on it, but we would be unable to add any freight to the cost, but if we sold it in Seattle, we would add the freight from San Francisco in establishing a delivered price.

Mr. Works: There being no question of freight absorption in that setup, your gross receipts would reflect the base plus freight in the top portion of that tabulation we put in yesterday, your Honor, and the freight alone would show in the expense below the line.

Q. Isn't that correct? A. That is right.

Q. But when you get outside of your normal freight area and you encounter prices which competitively are lower than your own base price plus freight, then it becomes necessary, if you are to sell at all, to absorb freight to equalize [398] with the lower price of the competitor, is that correct?

A. It is necessary to meet those competitive conditions in selling sugar.

Q. Is it correct to say that in normal times a mill will sell largely in its own normal sales area?

A. That is correct.

Q. And is it also correct to say that at times when there is an abnormal supply at a given mill, that the

(Testimony of J. B. Hayden.)

tendency from your experience, would be to expand and ship into distant markets?

A. That is correct.

Q. That would result in adding freight, would it not?

A. Yes, sir.

Q. I notice from Exhibit C, in crop year 1938, Clarksburg produced 580,000 odd bags, whereas in crop year 1939, it produced 848,000 odd. In 1940, it produced 826,000 odd, and in 1941, 653,000 odd. Also, I notice from Defendant's Exhibit D that Clarksburg sold in the fiscal year 1938, 390,000 odd bags, and in 1939 it jumped to 816,000 odd bags. In 1940 it receded slightly to 723,000 odd, and in 1941 it jumped again to 1,054,489 bags.

Do those figures indicate to you that during those years there was an abnormal condition of supply of Clarksburg sugar?

A. Yes, sir. [399]

The Court: May I ask, in having these plants in various parts of the country, do you make an effort to increase production over the normal supply of that area, or is it a custom to try to increase production?

The Witness: Well, we try to take sufficient tonnage of beets to operate the plant at an efficient capacity. If you have a normal growing season and the tonnage is normal, we can expect to have a normal crop. If we have a lower sugar content and tonnage, naturally, we do not have the production in that area.

The Court: But I notice the great increase in

(Testimony of J. B. Hayden.)

the production, let us say in this Clarksburg plant. Would that be an effort on the part of the company to expand, or would it be a demand, an unusual demand?

The Witness: Well, it would be an unusual demand for beet acreage and, of course, one of the reasons why our tonnage of production was great is we had an increased yield from the beets grown.

Q. (By Mr. Works): I notice, according to Defendants' Exhibit E, the tons per grower in the Clarksburg district were 1,000,574 in 1938, whereas in 1939 it jumped to 2,000,594 and in 1940 it stayed at about that figure, 2,000,576. From your standpoint as a seller of sugar, would that indicate that there was a bumper crop in beets at the Clarksburg district in 1939 and 1940? [400]

A. Yes.

Q. What correlation is there between yourself as eastern sales manager and Mr. Hardy as western sales manager when a situation of this sort arises?

A. Well, we obtain from our western sales office estimates of the quantities of sugar which can be marketed in the high netting area, say the five western states, and then we make estimates of where that sugar can be shipped to the best advantage in other parts of the country.

Q. Who determines how you shall have this flowing back and forth when you get a surplus in one or more areas, as against possibly normal conditions or even shortages in others?

A. Well, we made estimates on a combined form

(Testimony of J. B. Hayden.)

and submitted them to the president of the company with our recommendations.

Q. Did you make recommendations to him in view of this situation around Clarksburg?

A. Yes, sir.

Q. And what were they?

A. Well, the surplus over and above what the western sales manager reported could be sold, I entered it on my estimate, where it could be marketed to the best advantage.

Q. By surplus, you mean the amount over reasonable calculation of West Coast needs? [401]

A. Right.

Q. Do these shipments to other states shown on Exhibit D for the years 1939, 1940 and 1941, the sales figures, show what was done with that surplus, where it was sold? A. Yes, sir.

Mr. Arndt: Just a moment. I object to the use of the word "surplus." The chart shows the sales that were made and speaks for itself.

Mr. Works: I will accept that.

Q. How often were these estimates made as between Mr. Hardy and yourself?

A. Well, they were made monthly.

Q. On a monthly basis?

A. Yes, sir, and always extended over a period of the crop year.

Q. That is not quite clear to me. You made them on a monthly basis, but did that mean you merely estimated as to the balance of the current crop year?

A. That is right.

(Testimony of J. B. Hayden.)

Q. It was a diminishing—

A. That is right. We attempted to sell all of the sugar from any refinery during a crop year, unless there are some restrictions.

Q. Did Mr. Herman Zitkowski have anything to do with sales of sugar? [402]

A. No, sir.

Q. In addition to this bumper crop situation and over-supply of sugar in the Clarksburg area during 1939, 1940 and 1941, were there any other features which had significance as related to marketing of Clarksburg sugar? I mean starting with August 1, 1939, the commencement of the crop year of 1939.

A. Well, we had the war in Europe. When that started, I believe it was September 1939.

Q. September 1, 1939.

A. We had a very material acceleration in our sales. The demand increased. I believe in the month of September, we invoiced over one million bags of sugar.

Q. That is throughout the United States?

A. Yes.

Q. Do you recall whether or not in September, that same September of 1939, the President made a proclamation lifting all the sugar sales restrictions?

A. Yes. He lifted them for the balance of the year.

Q. What was the effect of the Pearl Harbor attack on December 7, 1941, during the 1941 crop year?

A. Well, it naturally cut off the supplies of raw

(Testimony of J. B. Hayden.)

sugar to the West Coast refineries and resulted in our selling more sugar in the five western states than we had been selling previously. [403]

Q. You refer, I assume, to cane sugar from Hawaii and the Philippines?

A. That is right, and the Philippines.

The Court: Pearl Harbor eliminated one of the main competitors?

Mr. Works: Yes, it did, your Honor.

Q. Subsequent to Pearl Harbor, we all know there were numerous military establishments set up along the Pacific Coast. Did that have any effect on sugar consumption on the West Coast?

A. Yes. As soon as those establishments were—or, as they were being built, well, there was an increase in population. The establishments purchased a lot of sugar from us.

Q. Is it correct to say that all during the period from September 1, 1939, when the war started in Europe, that the canneries were working overtime?

A. Yes. Our canning customers had an accelerated demand for their production, because the price advanced, and they started packing more fruit and more vegetables which required sugar. We had a material increase in our sales to canners during that period.

Q. Was that nationwide? A. Yes.

Q. In early 1942, did you attend a certain meeting or [404] meetings with government officials with reference to shipment of sugar?

A. Yes, in Chicago.

(Testimony of J. B. Hayden.)

Q. Where was it? A. In Chicago.

Q. Will you state to his Honor what took place at such meetings?

The Court: When was that?

Mr. Works: This was shortly after Pearl Harbor, your Honor, early in 1942, I believe.

The Witness: Yes.

Q. (By Mr. Works): Could fix the date any better than that?

A. Well, it was shortly after the first of the year, as I recall, in January. The government officials called us in there for the purpose of advising us of the submarine attacks on boats from the Cuban supply and asked us if we would be willing to ship our sugar to what they called the deficit area, which was east of Chicago.

Q. And did the company comply with that?

A. Yes.

Q. What kind of a freight arrangement developed from that?

A. We were paid on the Chicago net for the sugar.

Q. The government paid the rest? [405]

A. The government paid the freight beyond Chicago.

Q. Prior to that time, on your shipments into the eastern territory, you had been paying the entire freight, is that it? A. That is right.

Q. I notice some shipments to ports on the East Coast—I say ports, but these are states, although I assume Massachusetts means Boston, and New York

(Testimony of J. B. Hayden.)

means New York, doesn't it? A. That is right.

Q. By what method of transportation was that sugar delivered to those seaports?

A. By boat.

Q. Was the rate by boat cheaper than that by rail? A. Oh, very much so.

Q. And did the company on these shipments to eastern points use the cheapest form of transportation available? A. That is right.

Q. To your knowledge, during this period between 1937 and 1942, was there any agreement or understanding that American Crystal Sugar Company would abandon California or West Coast markets in favor of its competitors?

A. Never heard of it.

Q. Did you have occasion, in your capacity as eastern sales manager, to study the behaviour of your competitors, [406] such as Holly and Spreckels, with reference to their efforts to sell sugar?

A. Why, yes. Through our brokers we had information on where they were marketing their sugar, and, of course, we come in competition with our competitors' sugar at all times.

Q. Did you or did you not ascertain that during the same period you were making heavy shipments east, they were making heavy shipments east?

A. Yes, sir.

The Court: Were they in on this conference in Chicago, also?

The Witness: Oh, yes. The government called all the beet sugar companies in.

(Testimony of J. B. Hayden.)

Mr. Works: That was early 1942, your Honor, during the 1941 crop.

Q. Did you ever see or hear anything indicating that there was any such understanding between your company and these other companies with reference to abandoning the California market?

A. No, sir.

Q. If there had been any such agreement or understanding, would or would it not have resulted in some deviations from the normal marketing procedures?

Mr. Arndt: If your Honor please, I object to that as purely a conclusion of this witness. In the second place, we [407] make no claim that they were going to abandon the California market.

Mr. Works: In whole or in part, that is the charge, as I understand it. [408]

The Court: After the war started in Europe was there an accelerated demand for sugar? And if there was why was the price of sugar reduced? And why did the grower get less money?

The Witness: Well, I can recall one situation there in September of 1939. The Government lifted the quotas which resulted in there being more sugar placed on the market because we had quota sales restrictions prior to that time and that resulted in more sugar being offered than could be consumed. Naturally it depressed the price.

Q. (By Mr. Works): How were the price trends during these years? Can you enlighten us, Mr. Hayden?

(Testimony of J. B. Hayden.)

A. I haven't the various moves in the market.

The Court: The Government removed restrictions so as to make sugar more available and to take care of the shortage, didn't it?

The Witness: Yes.

The Court: And the shortage increased the price.

The Witness: It resulted eventually in a lower price.

The Court: You got a better price when working under the quota?

The Witness: That is right. The more sugar that is offered in the trade, why, it has a tendency to reduce the price. Generally speaking in the Chicago-West market there is more sugar produced than can be consumed in that area and [409] it is necessary to ship the sugar east of Chicago.

The Court: That is all.

Q. (By Mr. Works): Mr. Hayden, will you please state whether or not the fact that during 1939, 1940 and 1941 these growers were being paid on a joint net basis had any effect whatever on either the price or the supply or competitive conditions with reference to sugar? A. No, sir.

Q. Did the fact that the growers were being paid in that manner during those years have any effect whatever upon the efficiency of your sales staff or the marketing method which you employed in the selling of sugar?

Mr. Arndt: We object to that question as compound. The question as to the effect on the efficiency calls for a conclusion; the question as to the mar-

(Testimony of J. B. Hayden.)

keting method I do not object to but it is a compound question.

Mr. Works: I will break it up.

Q. (By Mr. Works): First, did it have any effect on the efficiency? That is the language used in the complaint, your Honor.

Mr. Arndt: I am not objecting to it on the ground it is immaterial. I am objecting to it on the ground it calls for a conclusion of this witness.

The Court: A conclusion of somebody is going to be necessary, counsel. This witness is supposed to be schooled in that particular line. [410]

Mr. Arndt: We don't even know if this witness knew anything about the change, knew the change was made, knew when the change was made or knew any of the circumstances regarding it.

The Court: So far you have only made one claim of lack of efficiency and that is in the method of selling. The additional freight paid has been your principal contention.

Mr. Arndt: That is correct, your Honor, and this man has testified that it was the president of the company who determined what sales were to be made outside of the normal territory. He made his recommendations and it was the president of the company who made the determination.

The Court: Objection overruled.

Mr. Works: Will you read the question?

(Testimony of J. B. Hayden.)

(Question read as follows:

“Q. First, did it have any effect on the efficiency? That is the language used in the complaint, your Honor.”)

The Witness: No.

Q. (By Mr. Works): The answer is no?

A. Yes, I said no.

Mr. Works: Thank you. You may cross examine.

Cross Examination

By Mr. Arndt:

Q. When did you first know that the method of paying [411] growers in the Clarksburg district had changed from the net of Clarksburg alone to the joint net of Holly, Spreckels and Crystal?

A. Well, it was some time in recent years, since this litigation started. I didn't know prior to that time.

Q. In other words, during the crop years 1938—pardon me, 1939, 1940 and 1941 you knew nothing about that situation at all? A. That is right.

Q. You hadn't discussed it with anyone connected with the company? A. No.

Q. And you didn't know the reasons for putting it into effect? A. No.

Q. And so when you testified that there was—I will withdraw that. So there was nothing that would call your mind during those years to determine whether that situation had any effect upon the sales department because you didn't know it existed, isn't that correct?

(Testimony of J. B. Hayden.)

A. I didn't know it existed.

Q. Now then, you have referred to——

The Court: That is the best kind of evidence you can have, counsel, that he didn't know it and there was no change in his methods. [412]

Mr. Arndt: It is our position, your Honor, that it was the president, whom I hope they will bring here, Mr. Wilds, who either he or the chairman of the board, who was the man who made the agreement and who was the man who determined these sales and was the man who determined what particular sales were to go elsewhere and he is the man whom I would like to see here.

The Court: Mr. Witness, when you made your recommendations for the absorption of the product in various plants, what was your experience? Did they usually follow your recommendation or was it the ordinary practice to make changes without your recommendation?

The Witness: They were usually followed.

The Court: You say they were generally followed?

The Witness: Generally followed. In fact, we discussed the statement and the president of the company asked me many questions before he would approve of the sales as outlined in my recommendations to be sure that we were obtaining the highest net for our sugar.

Q. (By Mr. Arndt): Now, you have made reference to the San Francisco base price. Now, what other base points were there during those years?

(Testimony of J. B. Hayden.)

A. Well, there was New Orleans and New York, Boston, Philadelphia, Sugarland, Texas.

Q. What was the last name? [413]

A. Sugarland, Texas, a cane refinery located there.

Q. Now then, when sugar was sold in Texas it was sold at Sugarland, Texas price plus freight from Sugarland, Texas, is that correct?

A. Well, not always. There were competitive conditions at times that deviated.

Q. But those competitive conditions might lower but wouldn't increase the price?

A. That is right.

Q. Then when sugar was sold to Illinois for example, what was the base point for that?

A. New Orleans.

Q. So then when sugar was shipped from California to Texas the difference between the freight rate from California to Texas and the freight rate from Sugarland, Texas, to the point of destination was absorbed by the company?

A. That is right.

Q. And when sugar was shipped to Chicago the difference between the freight rate from San Francisco to Chicago and the freight rate from New Orleans to Chicago was absorbed by the company?

A. That is right.

Q. Now, have you seen this document, Exhibit D, geographical distribution of sales of Clarksburg sugar? A. (No answer.) [414]

(Testimony of J. B. Hayden.)

Q. Did you see it while it was being prepared or since? A. No.

Q. Now, do the records of the company contain data so that a similar geographical distribution could be made for each of these same years, for each of the other plants of Crystal? A. Yes.

Mr. Arndt: Mr. Works, would you be willing to furnish us that information in a similar form for each of the other plants?

Mr. Works: Yes, if his Honor feels it would be any assistance.

Mr. Arndt: I think this is incomplete, if the court please, and unless we know what happened in the other plants we would not be able to see where the sugar from the other plants went in connection with this particular plant.

The Court: I am not going to order it, counsel, because I think we have covered enough territory.

Mr. Works: My own thought is it would be of no help because they have their own condition of supply. Where they shipped to would depend on what they had.

Mr. Arndt: For example, if it shows they were shipping into California or California was shipping into their territory that certainly would allow the court to make certain inferences. [415] This witness made a general statement——

The Court: I have this thought in mind. Every time there was a freight absorption that Crystal absorbed, the grower would also absorb one-half of that.

(Testimony of J. B. Hayden.)

Mr. Arndt: That is correct.

The Court: It would be pretty hard for me to infer that they were deliberately cutting down their own profits.

Mr. Arndt: Except for this, your Honor. Suppose the evidence develops that in 1938 Spreckels, for example, had a freight charge of .546 while Crystal had a freight charge of .191, which is one-third thereof—not one-third less but one-third thereof and those are the figures we think we will eventually present to your Honor.

It is our position that what happened was this—that Spreckels with that particular showing was unable to compete with Crystal and Spreckels having a much greater amount of sugar and having cane sugar besides, told Crystal:

“You play with us or else,” and as a result, as your Honor suggested yesterday, Crystal played with them.

Mr. Works: I didn't understand His Honor suggested that.

The Court: What I meant was that was his theory, that Crystal was forced into line.

Mr. Works: Yes, that is correct.

The Court: By its competitors.

Mr. Works: It was Mr. Arndt's suggestion and not the [416] court's.

The Court: Would it be much of a burden to furnish that to counsel? I would like each side to develop its theory.

Mr. Works: That is all right. It won't be any

(Testimony of J. B. Hayden.)

work for me at all. It will be for Mr. Graham, but I will ask him to undertake it.

The Court: And he will pass it on to some subordinate.

Mr. Works: As they say in the army "before night there will be a private in the guardhouse."

Mr. Arndt: You are referring to Mr. Graham, the witness, and not Mr. Graham, the attorney?

Mr. Works: Yes, Mr. Robert Graham.

Mr. Arndt: That was just for the record, counsel.

Mr. Works: Yes, we are going to try to find out some other matters which might be helpful here, too.

The Court: Counsel, may I ask as a matter of information, is there in any of these exhibits or are you in a position to produce any evidence as to the lowering of the percentage of freight that Spreckels had to pay after the average went into effect? In other words, does it show any effect on their freight charges?

Mr. Arndt: We will show this, your Honor. We will show the joint net freight for the years '39, '40 and '41—we will show Crystal's individual freight for those three years, which will be less than the net, so therefore the Crystal, Holly together must have been higher than Crystal and we [417] can show that particular amount for those particular years.

We will show the effect of the two together combined for those years.

Mr. Works: Are you going to show combined freight rates for Holly and Spreckels?

(Testimony of J. B. Hayden.)

Mr. Arndt: No, no. I said we have the combined for the three, which is already in evidence.

Mr. Works: Combined freight rate for the three.

Mr. Arndt: Yes. We have the one for the Crystal alone. By subtracting that we get the combined for the two. That is all I am saying. That is a subtraction—mere mathematical subtraction.

Mr. Works: I think it is reasonably evident from the close relationship between the joint net and our multiple net for these three years.

The Court: As I stated yesterday or the first day of the trial, the effect of the war in 1942 created an abnormal picture and it is difficult for me to reconcile in my mind a comparison of a war year like 1942 with the year before. This witness has brought it out more clearly than the other witnesses have and we know as a matter of common knowledge that the shipment of sugar from the Pacific was stopped which in effect would create an increased consumption on the Pacific Coast.

On the other hand you have a situation where there was an [418] abnormal production and you had to find an outlet which would mean the seeking of new markets that were further away from your base. So, you have many factors that are going to have to be analyzed.

Mr. Works: Surely.

The Court: And I am willing to receive any data concerning these various factors that you may be able to place before me.

Mr. Works: We will prepare this data which Mr.

(Testimony of J. B. Hayden.)

Arndt is now requesting. And as I say we will endeavor to get some other information which may throw further light on this freight situation.

I was about to say I don't know whether your Honor has compared the joint nets with our single net for these three years but I would venture the statement that they are so close together in each case that probably the freight factor of the other companies wasn't very far from our own because the net result is about the same and the other expenses are pretty constant.

Q. (By Mr. Arndt): Now, Mr. Hayden, this situation with reference to the method of selling sugar, was that the general method used throughout the beet sugar industry in the United States during those years?

A. What do you mean "method"?

Q. Using San Francisco base point and using the [419] seaboard base point on the eastern seaboard and the two gulf points that you referred to.

A. That is right.

Q. So then as I understand it the cane sugar manufacturers set certain seaboard prices and that the beet sugar industry generally sold at 10 cents or from 10 to 20 cents, depending on the portion of the country, below that, and that insofar as the housewife was concerned that difference continued, but insofar as the canners and the large manufacturers who used sugar, the cane manufacturers dropped to the same price as the beet manufacturers?

A. Yes.

(Testimony of J. B. Hayden.)

The Court: That was simply meeting competition, was it not?

The Witness: That is right, sir.

The Court: You were competing with each other for the same market?

The Witness: That is correct.

The Court: If there was a preference given you had to give a price preference in order to meet that competition?

The Witness: That is correct.

Q. (By Mr. Arndt): Now, you have made reference to this one situation in which quotas were lifted. Was there any other particular situation comparable to the lifting of the quotas that you can remember during those years that affected [420] the price?

A. Well, the war conditions during September of 1939—war was declared in Europe and also I believe in 1941 the quota sales—sales quotas were lifted again.

Q. Are there other matters except those?

A. Matters of abnormal conditions.

Q. Abnormal?

A. I can't think of any others.

The Court: Let me ask this question. When the quotas were lifted at the time of the commencement of the war in Europe was that because the sugar refineries had accumulated a suitable surplus?

The Witness: That is right, sir.

The Court: And was that lifting at the request

(Testimony of J. B. Hayden.)

of the refineries in order that they might dispose of their surpluses?

The Witness: Not at the request of the refineries. Of course we had asked the Government to give us increased quotas during that period, otherwise we would have to carry a considerable amount of sugar over into the next operating year and it would finally result in cutting our production down.

The Court: And this was an opportunity to dispose of your surpluses so that you could build up production again?

The Witness: That is right, sir.

Q. (By Mr. Arndt): Now, were these quotas that you [421] referred to, quotas only on sales or were they also quotas on production or both?

A. Quotas I referred to were sales quotas.

Q. And were there any import quotas?

A. You mean sugars allowed to come into this country?

Q. Yes.

A. Yes. The Hawaiian Islands and Philippines, they all had a quota under the Sugar Act of 1937.

Q. And so did Cuba, isn't that correct?

A. That is correct.

Q. And then following the outbreak of war the Cuba import restrictions were removed, too, isn't that correct? A. I believe that is correct.

Q. Now, you referred to a meeting early in 1942. What was the name of that meeting, if it had any name?

A. Well, it was the sugar branch of the United

(Testimony of J. B. Hayden.)

States Department of Agriculture. They had asked us to attend the meeting.

Q. Now, prior to that, in the early part of 1942, was there any time during 1939, '40 or '41 in which sales that were made east of Chicago were sold at the Chicago price?

A. No, not prior to that arrangement with the Government.

Q. So that prior to that time any sales that were made in the eastern territory or the midwestern territory had no reference to the Chicago price?

A. That is right.

Q. Was there a particular boundary line between the territory to which your Denver plant, or your Rocky Ford plant, I mean, shipped westward and the Clarksburg plant could ship eastward, where the freight rates would be about equal?

A. I can't recall Rocky Ford sugar being shipped westward, except to New Mexico and Texas points. That is as far west as we went with Rocky Ford sugar, if I recall.

Q. But Clarksburg sugar was shipped to Colorado? A. It may have been.

Q. Are you familiar with that or not?

A. Well, I don't remember all the figures there.

Q. The court asked you how it happened that the grower got less in 1939, 1940 and 1941 than he did in 1938, and the only matter that you referred to, as I remember, was the lifting of the restrictions. Have you any other explanation besides that?

(Testimony of J. B. Hayden.)

A. Well, there was an increased freight cost during that period.

Q. You don't mean by that that the freight rates went up, do you?

A. No. An increased freight cost in shipping sugar to farther markets.

Q. Are those the only two matters you can point to?

A. Well, I don't know just what the fluctuations in [423] the base price of sugar were during that period. That might reveal why the growers received less.

Mr. Arndt: That is all.

Redirect Examination

By Mr. Works:

Q. This lifting of the quotas on September 11, 1939, by presidential proclamation, did that bear any relation to so-called panic buying at that time?

A. Yes, sir.

Mr. Works: That is all.

(Witness excused.)

The Court: How many more witnesses have you?

Mr. Works: We have just one, your Honor.

The Court: We will take a recess until 2:00 o'clock. Do you think you will be able to finish your evidence this afternoon?

Mr. Arndt: Yes, your Honor. You told us to, and we intend to.

The Court: I know, but I have told you a lot of things you haven't paid any attention to.

(Thereupon, a recess was taken until 2:00 o'clock.) [424]

Los Angeles, California

Friday, February 24, 1950, 2:00 p.m.

The Court: I would like to ask Mr. Holmes a few questions before you put on your next witness.

LESTER J. HOLMES,

heretofore sworn on behalf of the plaintiff, resumed the stand and testified further as follows:

The Court: Mr. Holmes, what is the season in which you run your plant? You don't run it all the time?

The Witness: No; generally from, well, say the first of August to the latter part of December, depending on the crop to be processed.

The Court: What is the capacity of your plant?

The Witness: We are rated at 2,000 tons.

The Court: A day?

The Witness: A day.

The Court: And during the period that you shipped beets to Oxnard was that due to the fact that you had more beets than your plant could handle?

The Witness: That is right. Those three years—I believe I could refresh my memory as to the figures, but those three years were the greatest slicing, average slicing capacity of any period during the time we have operated.

The Court: When you have a contract with a grower at prices based upon beets, it is controlled

(Testimony of Lester J. Holmes.)

by two factors, [425] the sugar content of the beet and the sales price of the sugar.

The Witness: That is right.

The Court: Now, who determines when the beets shall be harvested?

The Witness: When?

The Court: Who determines that?

The Witness: That is a joint arrangement between my agricultural department, myself and the grower as to the condition of the beets—a delivery of beets which will operate the mill at the most efficient capacity.

The Court: Does your agricultural department go around and make tests of the beets to determine whether they have reached their maximum sugar content?

The Witness: Yes; he starts taking samples generally around the first of July.

The Court: I think it was you who testified that in 1943 and 1944 you were starting to give bonuses.

The Witness: In 1942 we gave a bonus for early delivery.

The Court: In order to keep your plant moving and working at capacity you needed beets?

The Witness: That is right, to start with.

The Court: Yes.

The Witness: To start with we had quite a crop—we couldn't move them by rail or barge—we couldn't move them by rail to Oxnard therefore in order to get the harvest under [426]way early, realizing that the growers would have to suffer a little

(Testimony of Lester J. Holmes.)

loss by reason of the beets not being ripe we agreed to give them a bonus to somewhat offset that.

The Court: Do you know what the capacity of the Oxnard plant is?

The Witness: Around 3,000, I think.

The Court: That is the information I was interested in.

Mr. Works: Unless Mr. Arndt has some questions you may step down.

Recross Examination

By Mr. Arndt:

Q. Now, you made reference, Mr. Holmes, to the fact that this early delivery bonus, one of the reasons for that was the beets were not quite ripe. When you say "not quite ripe" you mean they had not reached their full sugar content, is that correct?

A. That is correct.

Q. The same condition of unripeness would apply to early beets in 1938, 1939 and 1940, would it not?

A. To a certain extent. There are some times when your beets may mature early. Sometimes they don't. That is a situation which depends on weather and the time they were planted and quite a few things like that.

Q. Now, isn't it a fact when you and your agricultural [427] department on one side and the grower on the other side differed as to when beets were harvested, your decision controlled?

A. Not 100 per cent. We generally tried to work

(Testimony of Lester J. Holmes.)

out an amicable agreement. Sure, we have our disagreements. [428]

Q. Where you couldn't agree, you controlled it, isn't that right?

A. Theoretically. On the other hand, the grower can stall and we can't force him.

The Court: I have another question. Prior to the 1939 contract, was there considerable competition among the sugar refineries for the different growers?

The Witness: Yes, and that didn't change. That didn't change during the period.

The Court: There was no advantage in the grower changing under your 1939, 1940 and 1941 contract, was there?

The Witness: Yes. There were certain advantages which are not shown in the contract. For instance, we had—for direct delivery to the factory, we paid 30 cents a ton for the first three miles and five cents a ton for each additional mile up to 11 miles. In other words, we gave a 70-cent direct delivery cost where the beets were delivered direct to the factory. However, that did not apply to Mandeville because we bought the beets at Mandeville on the dump and transported them either to the factory or to Oxnard.

The Court: Now, for instance, take Mandeville. As long as the price that they were going to receive for their beets was the same, whether they were delivered to you or Spreckels or Holly, it didn't make any difference to them, did it? You know of no advantage to them one way or the other? [429]

(Testimony of Lester J. Holmes.)

The Witness: There was a slight difference in the contract, even using the same joint net. There would be a slight difference in the contract. You might say it was immaterial, but there was a slight difference in the contract. In some cases, low sugar content beets brought more, I think, with Holly and Spreckels than they did with us. In one or two cases, with the higher sugar content, we paid a few cents more a ton.

The Court: You mean to tell me that during these three years in dispute here, that the sugar refineries were still competing among themselves for growers?

The Witness: I think I can safely say if we wanted a grower, we went after him.

The Court: Did you lose any growers during that period?

The Witness: I don't think so.

The Court: Did you gain any?

The Witness: Yes.

The Court: Were those growers some that were immediately adjacent to your plant?

The Witness: Yes, and I think we picked up some on Sherman Island, which is about halfway between Clarksburg and American Island, where we were operating.

The Court: Was that handled by more favorable financial arrangements? Was that the means you [430] had of getting a grower?

The Witness: I wouldn't say financial. I don't believe the financing of those growers—we did very little financing during that period. But some grow-

(Testimony of Lester J. Holmes.)

ers would say we had better seed. We thought maybe we had a little better seed. We had what we thought was a little better agricultural department. Probably the other people said theirs was better, too.

The Court: You will always find among growers some that think they can get a better deal other places, even if they can't, isn't that right?

The Witness: That's right.

The Court: There is always a certain amount of change due to that.

The Witness: There are certain growers that would have no dealings with me at all, and they very plainly told me so. They would grow for another company, even though our contract was the best.

The Court: That's all I have.

Q. (By Mr. Arndt): Isn't it true that during the years 1938, 1939 and 1941, Mandeville and Zuckerman were the only growers you had in San Joaquin County?

Mr. Works: I did not hear that.

(The question was read by the reporter.)

The Witness: Actually growing, we had a contract in [431] Quinby Island, which I believe is in San Joaquin County, and they were flooded at the same time Mandeville was, and we did not renew that contract.

Q. (By Mr. Arndt): Mr. Zuckerman tells me Quinby is in Contra Costa County.

(Testimony of Lester J. Holmes)

Mr. Works: We will accept that stipulation if it is offered. I don't know.

The Witness: I thought it was in San Joaquin.

The Court: I don't know what materiality it has, anyway.

Mr. Arndt: That is all. Thank you.

The Witness: That is all.

(Witness excused.)

Mr. Works: Mr. Hardy.

M. W. HARDY

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: M. W. Hardy.

Direct Examination

By Mr. Works:

Q. Where do you live, Mr. Hardy, please?

A. Orinda, California.

Q. What is your business or occupation?

A. Western sales manager for American Crystal Sugar. [432]

The Court: A big man like you should be able to speak up so we can hear you.

Q. (By Mr. Works): How long have you been with them, Mr. Hardy, in that capacity?

A. Since 1937, I believe, or 1938.

Q. How long have you been associated with the sugar business overall? A. Since 1920.

(Testimony of M. W. Hardy.)

Q. What are your duties as West Coast sales manager?

A. Supervision of sales in the five western states, in addition to western Montana, through brokers and our own organization.

Q. The five western states are the normal sales area over which you have jurisdiction?

A. Yes.

Q. According to Defendants' Exhibit C, you had a rather heavy production of sugar beets in California in the year 1939-1940 and to a somewhat less extent in 1941. Does that mean that during that period you had a surplus inventory, as far as Clarksburg is concerned? I was giving you Clarksburg figures.

A. Yes.

Q. During that period, 1939, 1940 and 1941, were you in the habit of making reports and sales estimates to your home office in Denver? [433]

A. Yes.

Q. And did you report the fact of that surplus inventory to them in Denver?

A. Yes.

Q. Just how were these reports and estimates submitted to them?

A. They were prepared in detail by customers as to the amount of sugar you could sell to each customer for the month following, and for the 11 months following that.

Q. In making out the estimates, was it or was it not your practice to allow yourself a reasonable cushion over and above sales requirements?

(Testimony of M. W. Hardy.)

A. Well, you always really are optimistic on what you are going to sell, sometimes a little overly so.

The Court: You have to be optimistic to be a salesman, don't you?

The Witness: I think so.

Q. (By Mr. Works): Was there any time during these three years, 1939, 1940 and 1941, when you were not permitted by Denver to sell all the Clarksburg sugar in your sales area that you could sell?

A. Not during that period.

Q. During that period, were you ever instructed to cut down sales in your territory?

A. No. It was just the reverse. We had a surplus. [434] They were prodding me all the time to sell more.

Q. Was there any time during that period when you did not have sufficient sugar on hand to satisfy marketing needs, and I am referring to Clarksburg sugar? A. No.

Q. Do you also have in charge the sales of molasses in your district?

A. For the Clarksburg factory, to customers alone. The balance of the molasses that I don't sell is sold elsewhere.

Q. I just want to ask how much time per year do you spend on the sale of molasses?

A. That is on a yearly contract. It only takes a few minutes, you might say, to consummate the contract, and get it signed. [435]

Q. Now, according to Defendant's Exhibit C

(Testimony of M. W. Hardy.)

your sales in Northern California jumped from 267,000-odd bags in the crop year 1939, to 314,000 in the crop year 1940. Then, too, 516,000-odd bags in the crop year 1941.

Can you tell his Honor the reasons for those jumps in deliveries in Northern California?

A. Well, in 1939, at the beginning of the second world war, there was a big hysteria developed about that time mainly, I believe, due to experience in the shortage of sugar in the first world war and there was quite a little hoarding.

Then there was in 1940, I believe that was the year that—wasn't that the year the restrictions were lifted? They were lifted in 1939.

Q. The fall of 1939?

A. And there was increased sales to canners. There was a large demand for export canned goods—largely canned goods that take considerable sugar. It was packed in a heavy syrup and where prior to the second world war there was very little export other than what they term "water pack", so a greater amount of sugar was used by the canners at that time. And also there may have been in that time some interruptions due to strikes and what-not. I don't recall that. It may temporarily have increased our sales.

Q. Now, you mentioned this canning situation. Did that become accelerated after the outbreak of the world war in [436] Europe in September, 1939?

A. Oh, yes.

(Testimony of M. W. Hardy.)

Q. And then was it accentuated still further after Pearl Harbor?

A. Well, after Pearl Harbor—of course there was a shortage temporarily of off-shore sugars which naturally drew more on the supplies we had.

We had abnormal sales, you might say, for a period of time due to Pearl Harbor and the loss of the Philippines.

Q. By "off-shore" you mean Hawaiian and Philippine sugar mainly? A. Cane, yes.

Q. That improved the market for beet sugar in California? A. Yes.

Q. Do you attribute the jump to 516,000 odd bags in the crop year 1941 to that?

A. I would say that was the major reason.

Q. Bearing in mind that the crop year 1941 extended to July 31st, 1942? A. Yes.

The Court: May I ask, do you work on a straight salary or salary and commission?

The Witness: Straight salary.

The Court: Doesn't make any difference to you?

The Witness: No, it has no bearing on it at all.

Q. (By Mr. Works): To your knowledge during these years or affecting these years was there any kind of an agreement between sugar companies limiting or tending to limit sales in California or elsewhere in your sales territory?

Mr. Arndt: Just a minute, if the court please. I object to that as no proper foundation laid as to what he knows about any agreement between the

(Testimony of M. W. Hardy.)

sugar companies or if he was present when an agreement was made or knows about an agreement.

The Court: I think he can answer as to whether he knows anything about it.

Mr. Works: That is all I am asking.

Mr. Arndt: He asked if there was such an agreement.

The Court: He asked if he had knowledge of such an agreement.

Mr. Arndt: Pardon me. If that is what he said that is all right.

The Witness: No, I do not.

Q. (By Mr. Works): Did you in the course of your activities see or hear anything to indicate the existence of any such agreement or understanding?

A. No.

Q. Is it or is it not the fact that at all times during those three years you endeavored to sell all the sugar you [438] could in your sales territory including California? A. That is right.

Q. From your experience is it or is it not the fact that this situation where the beet growers were paid on a joint net during 1939, 1940 and 1941 had no effect whatever on either price or supply or competitive conditions with reference to sugar?

A. As a matter of fact I didn't know it was in effect.

Q. The joint net? A. No.

Q. Now, did the utilization of this joint net during those years, so far as you were able to observe, bring about any change whatever in your territory

(Testimony of M. W. Hardy.)

either in marking method or efficiency in the sale of sugar? A. No.

Mr. Works: You may cross examine.

Cross Examination

By Mr. Arndt:

Q. Now, isn't it a fact, Mr. Hardy, that during the crop year 1939 sales in Northern California fell off while production went up?

A. I don't have those figures before me.

Q. You have no recollection of what occurred during that year?

A. Of what the sales were? [439]

Q. As to whether the sales went up or down during the crop year of 1939.

A. Compared to what year?

Q. The prior crop year.

A. To 1938? Well, I don't recall that.

Mr. Works: You say production went up while sales went down in 1939?

The Witness: I don't have the figures in mind.

The Court: That is a matter of mathematics to be gotten from the record, isn't it, counsel?

Q. (By Mr. Arndt): I will call your attention to Exhibit C, which shows from the crop year 1938 to the crop year 1939 the production at Clarksburg. It rose from 580,431 hundred pound units to 848,706 while deliveries dropped from 278,730 to 267,508. Have you any explanation of that?

A. We probably lost a customer that bought 20,000 bags a year. It might have been more than one customer.

(Testimony of M. W. Hardy.)

Q. Now isn't it a fact, Mr. Hardy, that when sales of California sugar were made outside of the western territory the first thing you knew about it was when you and your office received a report that the sale had been made?

A. That is right. The first time I would know the actual shipment being made was when I received a copy of the report of the shipment, but that shipment would be against the surplus that I had shown in a previous estimate. [440]

Mr. Arndt: I move to strike out as not responsive everything beginning with the word "but".

The Court: I will deny the motion. I want all the information I can get.

As I understand it you were never ordered to ship out of your territory sugar that you had allotted to your territory?

The Witness: That is right.

Q. (By Mr. Arndt): Isn't it a fact that allotments were at times made and the allotments were changed?

A. Not during the period in question.

Q. You mean it didn't occur at all during the crop year 1939 or 1940 or 1941? A. No.

Q. And insofar as the price at which you sold, was that the San Francisco base price plus freight as the minimum price which you could sell unless you had specific instructions to the contrary from Denver?

A. The price at which it was sold would be the delivered competitive price at any destination. It

(Testimony of M. W. Hardy.)

may equal the price, the base price at San Francisco plus the freight and it may be less.

Q. But your general authority was that you could sell at the San Francisco price plus freight or more without any specific instructions to the contrary but if you wanted to sell for less you had to get instructions from Denver? [441]

A. That is right.

Q. And then you reported directly to the president, isn't that correct?

A. That is right.

Q. Now, referring to the sale of molasses from the Oxnard plant. Did you have anything to do with that? A. No.

Q. In connection with the sale of beet pulp, the moistened beet pulp, did you have anything to do with that? A. No.

Q. Who handled that?

A. I really couldn't say who handled that.

The Court: Don't you know?

The Witness: Well, it was someone in the operating or agricultural department. I don't know who or which department would handle it.

Mr. Works: That is mostly for cattle feed, your Honor.

The Court: Well, human beings have to be fed the same as cattle.

Mr. Works: I will be glad to find out for you.

Mr. Arndt: That is all.

The Court: May I ask counsel, is there among the exhibits through these various years the price of

sugar—for instance from 1938 to 1943 or '44, the price that was received for sugar? [442]

I have in mind this thought as to what you are trying to develop. Prices may have varied. In other words, in 1938 the price of sugar was high. That being so would the grower of the beets get more money. I was wondering if there had been any chart made showing the relation between the amounts that the growers had received for their beets and the price of sugar as it varied from year to year?

Mr. Works: No, and one reason was that we understood that Mr. Arndt's attack was leveled at our freight deductions in the table.

Another reason, your Honor,—well, we will do the best we can. You have these base prices at several points around the country—

The Court: For instance, the Clarksburg plant during these years must have received a certain average price for their sugar.

Mr. Works: I can figure that, your Honor.

The Court: Now, how did that compare with the amount that the grower received?

Mr. Works: We have our broken down gross receipts, your Honor. It seems to me that covers it.

The Court: I don't know whether that is in the record or not.

Mr. Arndt: I have the figures and I intend to present them in my final brief, the percentages.

The Court: Then they are in the record. [443]

Mr. Arndt: The figures are in the record from which I will present these various percentages and

I will show what the situation was as far as they were concerned.

Mr. Works: Exhibit G and H for instance cover '37, '38 and '42 and they show the gross receipts from sales less cash discounts and allowances. It is broken down in hundredweights. That is the top figure in each of these exhibits. I think that is what your Honor has in mind.

The Court: That is what I have in mind.

Mr. Works: Then it is in the record.

Mr. Arndt: I intend to present to your Honor this broken down into percentages for those particular years and they will tell a very interesting story.

Mr. Works: Do you have any questions of this witness?

Mr. Arndt: No, I am all through.

The Court: You may step aside.

Mr. Works: Now, inasmuch as Mr. Arndt has requested information as to all of our mills, we will renew our offer of the exhibit which we were discussing yesterday and which shows the effect of these federal quotas upon our total production.

The Court: Any objection?

Mr. Arndt: The only objection I make is the objection I made before, and that is I asked for this information and it was denied me in the interrogatories and now they are putting [444] it in.

The Court: You asked a question this morning and I am still uncertain as to whether it is material. You asked for certain information this morning and I thought it was going to help you develop one of

the theories of your case, but if you are going into other plants I think they are entitled to show what effect it had. On the other hand if you abandon your other question and request for information I will deny admission of this.

Mr. Arndt: I will withdraw the objection.

The Court: It will be admitted next in order.

The Clerk: Defendant's Exhibit J.

(The document referred to was marked Defendant's Exhibit J and received in evidence.)

Mr. Works: Mr. Arndt heretofore favored us with various estimates of his idea of the measure of damages. May I submit this table of the differential between the single and the joint nets for the three years in question, your Honor?

The Court: As an exhibit, you mean?

Mr. Works: Well, I suppose so.

Mr. Arndt: I didn't submit mine as an exhibit. I submitted mine as part of a brief.

Mr. Works: All right. May we get it to your Honor in some appropriate form?

The Court: It is argument, really, isn't it? It is not evidence. It is argument.

Mr. Works: It is a computation, yes, which would follow argument.

The Court: Are the figures in on which you can base that?

Mr. Arndt: Yes, they are.

Mr. Works: Yes.

The Court: You might as well put it in the same

way as he is putting his guesses in. You might as well do some guessing, too.

Mr. Works: Shall we simply lodge it with the clerk and have it marked, or how shall we do it, your Honor?

The Court: Submit it with your brief.

Mr. Works: All right. [446]

Mr. Arndt: Counsel, for the purpose of identification in the case, I want to refer to it, so I will simply refer to it as your calculation as to damages.

The Court: Counsel, why don't you do this? Why don't you stipulate it may be marked for identification and you can refer to it?

Mr. Arndt: All right.

Mr. Works: As an exhibit for identification only. May I have this marked, then?

The Clerk: Exhibit K for identification.

(The document referred to was marked as Defendant's Exhibit K for identification.)

Mr. Works: The defendant rests.

I understand Mr. Arndt has been talking about further stipulations, which is entirely satisfactory with us, but perhaps we should technically leave the case open for that purpose.

The Court: I will give you both a wide open gate.

Mr. Works: I did not know whether your Honor wanted to think about some time limit or should we leave it open?

The Court: I don't think it should be left open indefinitely.

Mr. Works: I think there should be a time limit.

Mr. Arndt: May I make a suggestion in that regard?

Mr. Works: Surely. [447]

Mr. Arndt: That we have it continued to some law and motion day, and by that time we will have our stipulations in, and the court can order it submitted and allow a certain time to file our briefs.

The Court: How long do you want to submit that additional information?

Mr. Arndt: It is simply a question of how long it will take to check up certain things. Insofar as mine is concerned, I have the data to present to Mr. Works. He may have to check it up. That shouldn't take more than a week, I think. We ought to have it in a week from today.

Mr. Works: Well, our most arduous task is to have our man go back to Denver and make the calculations for all the other mills. I don't know how long it would take.

The Court: Suppose we make it three weeks from Monday.

Mr. Arndt: Yes.

Mr. Works: All right.

The Court: I will set it for law and motion at 10:00 o'clock, and you can submit any additional stipulations or facts.

Mr. Arndt: If the court please, I have one matter yet to present today, and that is my statement as to attorney fees. That is the only other thing I have before the case is closed today.

The Court: I expected to hear something about that. [448]

Mr. Arndt: We have filed out time records. That is complete, with the exception of the matters that occurred before the District Court in Colorado, as of which we have submitted a transcript as to the work that was done in Colorado. We selected Colorado counsel, who appeared there, and we paid them \$300 for their services in that connection.

Mr. Works: We will accept that stipulation.

Mr. Arndt: That money was actually paid.

Mr. Works: I say we will accept the statement.

Mr. Arndt: The rest of the services were performed primarily by myself, with the exception of whatever is shown in the statement where some other persons appeared. Wherever appears the initials S. A. or S. M. A., those services were rendered by myself. The time kept is complete, except for the trial itself, and the day before the trial, and Wednesday, which was over 3,000 hours.

I was admitted to the Bar of the State of California in 1920 and have been a member of the Bar ever since. I was admitted to the District Court in the Northern District of California in 1920, and in the Southern District in 1931.

In my opinion, my services are reasonably worth \$30 an hour, and that is the current rate that I charge.

Mr. Works: The total time is how many hours?

Mr. Arndt: A little over 3,000 hours.

Mr. Works: I thought I saw something about a request [449] for a \$30,000 allowance in some paper.

Mr. Arndt: We were asked to state what our maximum allowance would be, and we said \$30,000.

This comes to approximately \$24,000 or \$25,000.

Mr. Works: We make no issue at all as to the amount of work Mr. Arndt has done on this case. It is considerable. One of the things for your Honor to determine, I assume, is how much of it was necessary.

We also feel that the amount of recovery should be affected considerably, that is, the amount of attorney fees, should be affected considerably by the amount of the ultimate judgment, which may or may not be recovered by the plaintiff.

The Court: I know an attorney is always in an embarrassing position when he is asked to pass upon an attorney fee. We all know this has been a long, arduous case, in the way of preparation.

Mr. Works: No question about it.

The Court: If you gentlemen don't already know it, I am still a country lawyer, and I don't look at large attorney fees with very much favor, because where I came from and practiced law, we didn't get them. I am not very strong in allowing large attorney fees. I think the factors that you have mentioned should be taken into consideration.

Now, I would like to ask you, Mr. Works, outside of the element of damages, what material allegations in the complaint [450] do you contend that the plaintiff has not proved? Is that too broad a question?

Mr. Works: No, I don't think so.

The Court: The reason I am asking that question is this. You have contended that they have to prove all the material allegations in the complaint.

I have this thought in mind. The Supreme Court held that the material allegations of the complaint stated a cause of action. That is the law of the case.

Mr. Works: Yes, no question about that.

The Court: I am wondering what you contend now are the factors they have not proven.

Mr. Works: You and I, your Honor, have had a slight difference on the question of the effect upon interstate commerce. You want me to state our position. I will do it very frankly. The only evidence in this record I can see which affects the sugar in the interstate commerce situation, that is the question of the consumer of sugar in interstate commerce, and he is the fellow the Sherman Act is designed to protect, the only evidence in this record was given today on that issue. That was that this understanding or agreement with reference to the beets had no effect upon price, supply, or competitive conditions with reference to sugar in interstate commerce. I am not asking your Honor to agree with me at this point, but I am stating that, and we would like to [451] discuss that matter in the brief.

The Court: The thought that I have in mind is this. Of course, I agreed with you originally that beets did not affect interstate commerce. The Supreme Court held otherwise.

Mr. Works: It was alleged that there was a restraint upon sugar, the only interstate product, and Justice Rutledge took that as true on page 246 of the opinion. I have that right here, your Honor, if you care to look at it.

The Court: No. This is a kind of a free-for-all

discussion, because I know it will be a long time before the briefs are all in. I think about these things in the meantime. So I am trying to orient this case in my own mind.

Then, outside of the element of damages, it is your contention that the growing and selling of beets has no effect upon interstate commerce?

Mr. Works: I would make it a little broader than that, I think, your Honor, that this joint net setup had no effect upon the price, supply or competitive conditions with reference to sugar, which is the interstate product. The Supreme Court opinion certainly holds that. Therefore, while they may have proven a Cartwright Act conspiracy, where you don't need interstate——

The Court: At the time this suit was filed, the Cartwright Act was considered unconstitutional.

Mr. Arndt: That is right.

Mr. Works: I think Justice Treanor is the only one who thinks it is constitutional now.

The Court: I don't know exactly how to say it. I felt that that decision brought this down to more or less a question of the amount of damages. I realize there has been considerable testimony here from officers of the company, but I haven't found any explanation, at least a satisfactory explanation, for their change of method.

I read the president's explanation in the deposition during the noon hour. If I recall correctly, his explanation was it was to keep the growers from switching around from place to place; in other words, keep a stabilized group of growers which they

could depend upon as a source of beets. Now, that was stifling competition. That kind of an agreement, you can't get away from it, is stifling competition.

As a practical matter, the grower might have a choice of where he wanted to sell. Mr. Holmes testified that he might like some foreman or some superintendent of a plant better than another, but as far as the price is concerned, there was no advantage in switching around.

Mr. Works: I don't think I am at great variance with what your Honor says.

The Court: Then if they stifled competition, it was an advantage, the change, because they brought it about, the refiners, [453] they adopted the change of method here. Probably they found it working successfully in other places and thought they would try it here. But it was an advantage to them to change that contract, and if it was an advantage to them, to the refiners, then it would have to be at the expense of the growers.

Mr. Works: We are willing to concede, I think, and we always have, your Honor, that certainly the growers were deprived of the advantage of the single net of the most efficient company in each year. That means the difference between, let us say, the Crystal single net in 1939, 1940 and 1941, and the joint net. In one year we were below the joint net. In the other two years, we were a little bit above it, not very much. Certainly, they were deprived of that. As I said on the first day of this trial, that is one thing that does stick out all over this case, as a result of this joint net arrangement. They were deprived of

the advantages of the most efficient operator, which is measured in terms of the difference between the single and multiple net, unless they prove additional damages, and it is our view that they have not. I think it comes down to that on the question of damages.

The Court: Of course, outside of that angle, I am going to have to read the briefs and the various exhibits, but in briefing this case, I don't want you gentlemen to do like they [454] did in the last case I had. The briefs were as long as the transcript in the last case I had here.

In briefing this, I would like you to take enough time to do a good job in briefing, and not just see how much you can throw at me.

Mr. Works: Like the man who took the time to write a short letter?

The Court: Yes. Like saying the best extemporaneous speech is made after many hours of study, and the best briefs are some times that way. I don't want to have briefs that are twice as long as the transcript. In other words, I want you to boil your briefs down.

Mr. Works: I will certainly cooperate in that. We intend, your Honor, simply to state our views on this effect on interstate commerce, cite the cases, and let your Honor decide the question as you see fit. We will want to analyze the evidence considerably from the standpoint of damages. When I say considerably, I don't mean at horrible length, either.

There is still another issue. That is the issue of *pari delicto*, and we are going to submit that to your

Honor on the authorities heretofore presented to you. Your Honor knows more about this co-conspirator case than any of us.

The Court: I think the Supreme Court disregarded that and by their silence eliminated it. I don't think you'd better waste any time on that. I tell you frankly, I thought I [455] had something there at the time. Apparently, the court did not think anything of it, and the facts here indicate that relationship was such that they didn't have much choice. I don't think that could be relied upon here, if it can be relied upon at all in this type of case. I don't know. They seem to think that the companies that entered into these arrangements are free agents and the people that they deal with, that entered into these unlawful contracts, are free from any taint of responsibility.

Mr. Works: I wonder if we could do this, simply preserve the point and set it out in the authorities and not discuss it at all.

The Court: As far as I am concerned, there is no use in your wasting any paper on that, in arguing that point. But I am interested in the point as to the effect on interstate commerce, if any, and also the elements of damages.

It seems to me that I am a whole lot in the position of a jury after listening to the case, and that is, I find that if they are entitled to any damages, what are the figures?

Mr. Works: I think the cases give a pretty good indication of what the measures are. It seems to me that in this type of case, damages have to be proven

as a fact. The only thing is you are entitled to take a reasonable standard.

The Court: The difficulty of proving the damages is on the plaintiff. [456]

Mr. Works: That is right.

The Court: I also realize that in these various cases of this type that are submitted to juries, that the Supreme Court has upheld their verdicts, and sometimes it is very hard and difficult to understand how they arrived at the figure.

Mr. Works: Well, we would like to analyze those leading cases. We are all familiar with them. They have all been cited.

The Court: In other words, I used this expression before, that this is not the only reversal I have had, but you are asking me to look in a crystal ball and find what would have happened if these contracts hadn't been entered into. [457]

The Court: Then multiply it by three.

Mr. Works: Well, they had that same situation in the lawsuit involving Macey's which we cited to your Honor. There they were shut out of the market and they went ahead and figured the damages on the basis of what would have happened if they had gone on.

The Court: Let us have an understanding that after this case is submitted as to the length of time you want for briefs.

I want to say frankly I have plenty of briefs on my desk right now without rushing anybody, but when I take a case under submission I don't hold the briefs until they are all in. I start in with the first

brief that is filed and then follow it through and I try to be ready for the next brief.

I am perfectly willing to give you gentlemen any reasonable time that you can agree upon but I will tell you if you send in any voluminous briefs I will probably send them back to you.

Mr. Arndt: The Circuit Court of Appeals has a limit on the size of briefs.

The Court: We are dealing with a different problem than the appellate court. We are making a record for the appellate court. We are doing the ground work and we have the factual angle whereas as a rule the reviewing court does [458] not have to concern themselves a great deal about that.

Mr. Arndt: When I filed my brief in this case I thought I had it within the appellate court's limitation but when it came from the printer they called me up and said it was one page over, so I had to file a document asking leave to file one extra page and it was granted, but I thought I had it within the limits.

Mr. Works: It would have been simpler to take two paragraphs out of your brief.

Mr. Arndt: That was the last day.

Mr. Works: I would like to hear Mr. Arndt's thoughts.

The Court: How long do you want for your opening brief, Mr. Arndt, after submission of the case?

Mr. Arndt: Let us say 30 days.

Mr. Works: 30, 30 and 20 and if anybody gets into trouble the other side will be merciful, is that agreeable?

Mr. Arndt: That is correct.

The Court: And if the other side is not merciful I will be.

On March 20 it will just be the submitting of this matter at that time and if you have anything prepared before that time bring it in and we will take care of it.

I will say this to counsel, that I have appreciated the manner in which both sides have presented their case. And while at times it may have looked like some people were not [459] altogether cooperative, it seems to me the fact that we have been able to try this case in only three days does reflect a lot of cooperation and a lot of effort on the part of both sides and I have appreciated counsels' attitude in the matter.

Mr. Works: Thank you very much.

The Court: I think you are both a credit to your clients.

Mr. Works: We have appreciated your Honor's courtesy and patience.

(Whereupon, at 3:00 o'clock p.m. the above entitled matter was concluded.) [460]

[Endorsed]: Filed May 4, 1951.

Los Angeles, California

Thursday, February 23, 1950

INTERROGATORIES AND ANSWERS
THERE TO

Interrogatory No. 1

Set forth the names and places of residence of each officer of Crystal from January 1, 1937 to the date upon which these interrogatories are answered and state the office or offices held by each during said period:

Answer to Interrogatory No. 1

January 1, 1937 to December 20, 1948

Title and Name	From	To
Chairman of the Board		
C. K. Boettcher.....	Jan. 1, 1937	Dec. 20, 1948
Vice-Chairman of the Board		
W. N. Wilds.....	Jan. 1, 1937	Dec. 20, 1948
President		
W. N. Wilds.....	Jan. 1, 1937	Dec. 20, 1948
Vice Presidents		
H. E. Zitkowski.....	Jan. 1, 1937	Dec. 20, 1948
J. B. Grant.....	Jan. 1, 1937	May 20, 1947
J. B. Hayden.....	July 26, 1946	Dec. 20, 1948
Secretary		
W. E. Kraybill.....	Jan. 1, 1937	Dec. 20, 1948
Assistant Secretaries		
J. B. Hayden.....	Jan. 1, 1937	Dec. 20, 1948
J. A. Summerton.....	Jan. 1, 1937	Dec. 20, 1948
C. L. Allen.....	Jan. 1, 1937	Mar. 10, 1944
H. von Bergen.....	Aug. 6, 1948	Dec. 20, 1948
Treasurer		
W. E. Kraybill.....	Jan. 1, 1937	Dec. 20, 1948

Title and Name	From	To
Assistant Treasurers		
J. B. Hayden.....	Jan. 1, 1937	Dec. 20, 1948
J. A. Summerton.....	Jan. 1, 1937	Dec. 20, 1948
C. L. Allen.....	Jan. 1, 1937	Mar. 10, 1944
H. von Bergen.....	Aug. 6, 1948	Dec. 20, 1948
General Counsel		
J. B. Grant.....	Jan. 1, 1937	May 20, 1947
M. A. Lewis.....	Aug. 4, 1947	Dec. 20, 1948
Comptroller		
J. A. Summerton.....	Aug. 4, 1947	Dec. 20, 1948
Auditors		
R. H. Graham.....	Jan. 1, 1937	Nov. 30, 1947
E. E. Merrill.....	Dec. 1, 1947	Dec. 20, 1948

The place of residence of the above named individuals during the periods shown was Denver, Colorado.

Interrogatory No. 3

Par. 5 of the 1939, 1940 and 1941 contracts between Crystal and growers of sugar beets in California north of the 36th parallel refers to "the average net returns . . . received for sugar manufactured at beet sugar factories located in California north of the 36th parallel." State the location of each such factory and the name of the company operating it during each of said cropping years. [2]

Answer to Interrogatory No. 3

Clarksburg, California — Operated by American Crystal Sugar Company.

Alvarado, California; Tracy, California; Hamilton City, California—Operated by Holly Sugar Corporation.

Spreckels, California; Manteca, California; Woodland, California — Operated by Spreckels Sugar Company.

Interrogatory No. 4

Were there any other beet sugar factories located in California north of the 36th parallel during the cropping years of 1939, 1940 and 1941 and if so where were they located and by whom operated?

Answer to Interrogatory No. 4

There were no beet sugar factories located in California north of the 36th parallel during the cropping years of 1939, 1940 and 1941 except as stated in the Answer to Interrogatory 3. (Reporter's note: Original No. 3 deleted by counsel.)

Interrogatory No. 5-B

Set forth the amount of manufactured sugar that Crystal had on hand in California north of the 36th parallel. [3]

- (b) August 1, 1939.
- (c) August 1, 1940.
- (d) August 1, 1941.

Answer to Interrogatory No. 5-B

- (b) 287,123 one hundred pound units
- (c) 271,570 one hundred pound units
- (d) 330,044 one hundred pound units

Interrogatory No. 5-C

Give the information requested in item 4(b) as to the amount of manufactured sugar that Crystal had on hand that had been manufactured in Crystal's factory north of the 36th parallel in California.

Answer to Interrogatory No. 5-C

- (a) 139,233 one hundred pound units
- (b) 329,279 one hundred pound units
- (c) 361,424 one hundred pound units
- (d) 464,549 one hundred pound units
- (e) 64,032 one hundred pound units
- (f) 54,794 one hundred pound units

Interrogatory No. 6-B

State the amount of sugar in process of manufacture and not yet manufactured that Crystal had on hand at Crystal's factory north of the 36th parallel in California:

- (a) August 1, 1938;
- (b) August 1, 1939;
- (c) August 1, 1940; [4]
- (d) August 1, 1941;
- (e) August 1, 1942;
- (f) August 1, 1943.

Answer to Interrogatory No. 6-B

Crystal's factory north of the 36th parallel in California was not in operation on any of the dates specified in Interrogatory "6-A;" consequently, there was no sugar in process of manufacture at said factory on any of the said dates.

Interrogatory No. 7-B

Set forth the amount of sugar beets not in process of manufacture that Crystal had on hand in California north of the 36th parallel.

- (a) August 1, 1938;
- (b) August 1, 1939;
- (c) August 1, 1940;
- (d) August 1, 1941;
- (e) August 1, 1942;
- (f) August 1, 1943.

Answer to Interrogatory No. 7-B

Sugar beets not in process of manufacture on hand at American Crystal Sugar Company's factory north of the 36th parallel: [5]

At opening of business	Tons of Sugar Beets
August 1, 1938.....	None
August 1, 1939.....	None
August 1, 1940.....	None
August 1, 1941.....	None
August 1, 1942.....	1,512
August 1, 1943.....	None

Interrogatory No. 8-B

Set forth the tonnage of sugar beets manufactured into sugar by Crystal at its factory located in California north of the 36th parallel during the years ending

- (a) August 1, 1938;
- (b) August 1, 1939;
- (c) August 1, 1940;
- (d) August 1, 1941;
- (e) August 1, 1942;
- (f) August 1, 1943.

Answer to Interrogatory No. 8-B

- (a) 179,592 tons of 2,000 pounds each.
- (b) 196,489 tons of 2,000 pounds each.
- (c) 262,551 tons of 2,000 pounds each.
- (d) 270,010 tons of 2,000 pounds each.
- (e) 218,795 tons of 2,000 pounds each.
- (f) 199,157 tons of 2,000 pounds each. [6]

Interrogatory No. 8-D

Set forth the tonnage of sugar beets grown in California north of the 36th parallel during each of the years hereinafter set forth and manufactured during said years into sugar beets by Crystal during the years ending

- (a) August 1, 1938;
- (b) August 1, 1939;
- (c) August 1, 1940;
- (d) August 1, 1941;
- (e) August 1, 1942;
- (f) August 1, 1943.

Answer to Interrogatory No. 8-D

The request made in this Interrogatory contains a contradiction since the sugar beets grown in the designated periods are not necessarily manufactured in the same period. It is believed, however, that the information desired by plaintiffs is to be found in the figures set forth below. The tonnages given are of beets grown during the crop years 1937 to 1942, both inclusive, in areas in California north of the

36th parallel and delivered to and processed into sugar by Crystal.

- (a) 208,013 tons of 2,000 pounds each.
- (b) 208,350 tons of 2,000 pounds each.
- (c) 301,904 tons of 2,000 pounds each.
- (d) 309,183 tons of 2,000 pounds each. [7]
- (e) 256,484 tons of 2,000 pounds each.
- (f) 213,803 tons of 2,000 pounds each.

Interrogatory No. 9-B

Set forth the tonnage of sugar manufactured by Crystal at sugar beet factories located in California north of the 36th parallel during the years ending

- (a) August 1, 1938;
- (b) August 1, 1939;
- (c) August 1, 1940;
- (d) August 1, 1941;
- (e) August 1, 1942;
- (f) August 1, 1943.

Answer to Interrogatory No. 9-B

- (a) 27,253.00 tons of 2,000 pounds each.
- (b) 29,021.55 tons of 2,000 pounds each.
- (c) 42,435.30 tons of 2,000 pounds each.
- (d) 41,340.40 tons of 2,000 pounds each.
- (e) 32,698.60 tons of 2,000 pounds each.
- (f) 29,532.35 tons of 2,000 pounds each.

Interrogatory No. 9-C

Set forth the tonnage of sugar manufactured by Crystal from sugar beets produced in California

north of the 36th parallel during each of the years ending

- (a) August 1, 1938;
- (b) August 1, 1939; [8]
- (c) August 1, 1940;
- (d) August 1, 1941;
- (e) August 1, 1942;
- (f) August 1, 1943.

Answer to Interrogatory No. 9-C

The information requested in this Interrogatory cannot be furnished since some of the sugar beets produced in California north of the 36th parallel and delivered to Crystal were not processed into sugar at Crystal's Clarksburg, California, factory. As to such beets processed elsewhere, their identity as beets produced in California north of the 36th parallel was lost, and, consequently, the tonnage of sugar manufactured from such transferred beets is not determinable.

Interrogatory No. 9-D

Set forth the tonnage of sugar manufactured by Crystal from sugar beets produced in California north of the 36th parallel but manufactured outside of said area, during the years ending

- (a) August 1, 1938;
- (b) August 1, 1939;
- (c) August 1, 1940;
- (d) August 1, 1941;
- (e) August 1, 1942;
- (f) August 1, 1943. [9]

Answer to Interrogatory No. 9-D

The information requested in this interrogatory cannot be furnished, since beets produced in California north of the 36th parallel but manufactured outside of such area lost their identity as beets produced in California north of the 36th parallel; consequently, the tonnage of sugar manufactured from such beets is not known.

Interrogatory No. 11

Set forth all interoffice memoranda, communications, letters, directives, orders and instructions made, given or issued by Crystal between January 1, 1937 and January 1, 1943 regarding the form or contents of the contract between American Crystal Sugar Company and growers or regarding any change in the form of or wording of any contract or contracts between the company and the growers.

Answer to Interrogatory No. 11

The answer includes the following documents:

American Crystal Sugar Company
Intra-Company Correspondence

Attention of Mr. H. E. Zitkowski, Vice Pres.,
Clarksburg, California.

Denver Office

September 12, 1938

George was in this morning after his trip to Chicago and we discussed for a few minutes the changes mentioned in the 1939 beet contracts. The *limination* of Paragraph (3) and the changes you mention in Paragraph (10) meets with his [10] approval.

In regard to the joint net return, while he hesitated to be critical of it, he was afraid that due to the larger volume of net sugar that the Spreckels Sugar Company sold they would attempt to push their cane sales, in which they alone were interested, and ship beet sugar where there was a freight absorption as the growers stood 50% of this. Naturally the question arises on joint net as to whether the net of each Company will bear the same weight as another Company or whether it will be adjusted to volume of each individual Company. The thing I am trying to arrive at is whether the final net will be adjusted to volume per Company or whether we would just add the three nets for Companies and divide by three to obtain the net sales price.

If it will lead to a single sales agency controlled by the three companies with the absolute understanding that they are to take any and all business in competition with cane even if it cuts into the Sea Island business, we could probably sell the idea very readily. I can certainly see advantages in this particular deal and I am rather inclined to believe it to be a good idea.

I am enclosing a suggested addition to the schedule in paragraph (6) which we worked up for our own information. If it were to be incorporated in the contract I would change "percentage sugar extraction" to read "basis for sugar [11] extraction."

Very truly yours,

Lester J. Holmes, Manager

L.J.H.—LJH:AH

Enclosure

Air Mail

Denver, Colorado

Mr. L. J. Holmes, Manager
Clarksburg, California

Sept. 19, 1938

The 1939 beet purchase contract for the Clarksburg factory is in the printer's hands and will probably be available for shipment to you today. This will reach you in a few days.

In the meantime, in order that you may follow more clearly the changes made in the contract from that of a year ago, I am sending you a copy of the form prepared for the printer. Do not let this scare you, as a great many of these changes are for the printer's instruction in order to make the general make-up of the contract as nearly identical as is possible with that of our other forms used elsewhere. Until now the general form of the contract was the old Amalgamated form, which we are now correcting to conform with the make-up used in our other contracts. The old Clause 3 in your 1938 contract referring to irrigation limitations is out. In the old Clause 5, new Clause 4, the reference to beets of less than 12 per cent sugar or less than 80 per cent purity has been eliminated. The new Clause 5 it was necessary to change in order to define the net returns for sugar which in the future are to be based on the nets received by all of the beet sugar companies of northern California. The new Clause 6, your former Clause 7, defining net returns has been [13] altered in order to cover all the sugar companies involved, and at the same time make as nearly as is possible the same phraseology as is used in all our other con-

tracts. Clause 9, the former 10, has been altered in order to eliminate the objection raised by Mr. George Wilson that the Company, under the old phraseology, apparently had sole option at its discretion to change the quantity of beets as seemed necessary by the Company. I think this should remove all possible objection that there might have been to the old phraseology as it confines the Company's authority in the matter of a reduction to the extent necessary or required by lawful authority.

We have been advised that a meeting will be held in Chicago next Monday, the 28th, on the subject of proportionate shares and at that time we shall undoubtedly learn definitely concerning the acreage that will be allocated to the various beet growing districts of this country. Inasmuch as more than 30,000 acres in total are to be allowed the industry as a whole, which is more than has ever been planted heretofore, there should be no serious difficulty in obtaining a reasonably full acreage for all territories, although there probably will be some difference of opinion amongst the respective districts as to just what share of this total the various territories are entitled to.

The other sugar companies in northern California seem [14] to be most anxious to get their contracts in the field in that territory, and as we do not want to lag behind we have also taken prompt action to get the contract printed and to you. I see no reason why you should not begin to write acreage immediately, having in mind, of course, that that acreage

ment for that district. We shall probably know more about the entire program after the hearing in Chicago next Monday, and will, of course, promptly advise you of any limitations that we may be forced to accept for the Clarksburg district. In the meantime, in writing acreage, however, it should be understood that there is a possibility of a readjustment and we should confine ourselves to our district and our growers. In other words, we should proceed on the assumption that we will not take other companies' growers.

You have had some question as to the joint net, which we want, in all sincerity, to give a thorough trial. Theoretically at least this should work out to the advantage of the industry as a whole. This joint net will be the weighted average of the total sugar sold by each of the interested companies. In other words, it will be adjusted to volume. In all sincerity I do not believe your fears concerning the possibility that some sugar company may sacrifice its beet sugar are justified. Beet sugar as you know is selling [15] below cane, and the larger consumers especially are more interested in price than whether sugar is beet or cane. In any event, we all feel that this is deserving of a thorough trial.

You made a further suggestion in connection with the scale regarding showing percentage extraction and so on on the scale. We have not accepted this suggestion of yours for several reasons—one of them that we do have different extraction bases in almost each one of our purchase contracts. If we show it

in one we should show it in all, and if we show it in all we shall have endless explanations to make as to why the variations in these percentage scales. I do not want to introduce any new factor as it would complicate our problem as a whole rather than simplify it.

Now further as to contracting. The first thought you will have is how much acreage can we write for Clarksburg. We hope to be able to answer that question more definitely early next week. There is the possibility, however, that we will not be allowed as much acreage as we contracted for the 1938 crop. If such is the case, or in any event, we should be very careful to avoid as far as possible the need for heavy financing to grow the crop of beets on the part of our Company. This matter of financing the growers has been growing on us substantially and this year will run into considerable proportions. I realize you are selecting your [16] growers and risks, but nevertheless there is considerable risk involved and we have been criticized as financing some growers at least for a greater amount per acre than any other sugar company, which criticism may be true. I feel we should consider this very carefully and reduce to a minimum such acreage needing extensive financing by the Company, whether that be done directly or through a guarantee at the banks.

Yours very truly,

H. E. Zitkowski, Vice-President.

HEZ:m

Copy sent to Mason City 9-30-38

American Crystal Sugar Company

Intra-Company Correspondence

Attention of Mr. H. E. Zitkowski, Vice-President

Clarksburg, California

Sept. 28, 1938

Denver Office

We have discussed the contract for 1939 with several representatives of the Association and growers in this territory and we expect to contact more as soon as possible. We have talked with Gus Olson, Guy Fraser, George Wilson, and George Holmes regarding this matter and all have agreed that the most essential thing is to obtain more money for [17] sugar beets and if this is a step in that direction, they are willing to go ahead with it on trial.

While we have not mentioned the contract specifically with other growers, we have attempted to obtain some statements as to their opinion of the sugar business and as to whether or not they are of the opinion that the Company is making all the money. Very few realize the great difference caused by settlement being made below three and a quarter and practically all feel that the Government program has been a failure as far as providing more money for the growers, although it may have had the effect of cutting into the factory profit. At any rate the main theme seems to be "get more money"; if this points in that direction, they are willing to go ahead with it.

Very truly yours,

Lester J. Holmes, Manager

L.J.H.—LJH:AH

entered into. I would also recommend that we include a \$3.00 net in the breakdown of prices. [19]

In paragraph (7), the last part of it should be deleted and covered by paragraph (14), with provision made for the signature of the landowner as well as the tenant.

I have not discussed with the Committee of the Beet Growers Association your comments relative to net below \$3.25. Personally I feel that it is only reasonable, and if you wish me to get their views on this matter, I will do so. Naturally, their first reaction will be that it is out of line and I believe I should be pretty well informed before attempting to bring this subject up.

Very truly yours,

Lester J. Holmes, Manager

L.J.H.

LJH:AH—Encl.

Copy to Missoula 11/1/39

American Crystal Sugar Company
Clarksburg Factory

L. J. Holmes, Manager Clarksburg, Calif.
F. C. Zitkowski, Superintendent Oct. 31, 1939
G. W. Huhn, Cashier [20]

Attention: Mr. H. E. Zitkowski, Vice-President
Denver Office

Last night Frank and I met with a growers committee representing the local organization of the

Central California Beet Growers Ass'n. to consider the 1940 contract. They have three objections to the contract as presented.

The first objection was that the agreement providing for net selling price based upon the average of the three companies is entirely wrong in principle and this should be stricken out. They feel that they are growing beets for the American Crystal Sugar Co. and should not be at all interested in the net received by other companies. I argued that this agreement was entered into last year and should at least be continued until we have at least had a chance to prove or disprove the advantages even though it continues into a two-year proposition. As far as I can ascertain this feeling is general but at the same time it is hardly right to condemn a practice before we have been able to see the results. I believe we can prevail upon them eventually to accept this part for 1940. However, they were rather outspoken in their condemnation of the policy with other companies.

The second complaint was in regard to the scale for the purchase price of beets. The present 1939 scale was established with a $53\frac{1}{2}$ cent processing tax and they feel [21] that if Congress should take off the processing tax that a new contract should be entered into by the sugar companies and the growers so that the relative value of a ton of beets will be the same to the processor and the grower. In other words, I take it to mean that a paragraph would be inserted in the contract definitely stipulating that this contract was signed with the understand-

ing that if any changes were made in the present sugar legislation that a new contract would be agreed upon by the growers' representative and the processor, whether the processing tax was raised or taken off entirely. The basis for this agreement is that in 1936 the processing tax and benefit payment were discontinued and the complaint is that the processors made a profit far beyond reason according to the arguments put up.

The third was the proposed reduction below three and a quarter to one percent for every three and one third cents decline which they feel should remain at one to five. I tried to point out to them that this was put in with the contemplation that the processing tax might be further increased and that the company could not operate on the margin provided while the grower would receive the remuneration in increased benefit payment. This, however, failed to make any impression as they all seemed to have the idea the Company is making a great profit and could well afford to leave the contract below three and a quarter as in 1939. Apparently these items [22] discussed were the main contract as far as everybody was concerned and I feel we made little progress with the men and stated I would refer their comments to you for action.

As far as the criticism of the rasp was concerned they were not at all interested feeling that they had been receiving a square deal. I further proved to them that with the test we were making that our method was correct.

The committee consisted of George Holmes, Herb-

ert Merwin, George Wilson, Gus Olson, Reuben Merwin, Bob Yelland, Ralph Krull, and A. J. Sweeney.

Very truly yours,

L. J. Holmes, Manager

L.J.H.

LJH:ER

cc - Mr. W. N. Wilds, President

Air Mail

November 6, 1939

Mr. Lester J. Holmes, Manager
American Crystal Sugar Company
Clarksburg, California

Personal

On returning to Denver, I find your letter of October 31st with reference to your meeting with the local growers committee on the subject of the 1940 beet purchase contract. I shall in all probability be with you in the near future, [23] and it may be well to permit the matter to rest until that time and then, if it is considered advisable, to discuss the subject further with the growers' representatives. It is difficult to cover such a discussion in a letter without going into it very extensively. Referring briefly, however, to the three points raised, let me give you the following comments.

Concerning the first objection, which refers to an average net selling price for the sugar produced in Northern California, I think you yourself understand the principles behind this very thoroughly. The principal objective therein is to attain, as far

as this is possible, a higher average net receipt for sugar by avoiding, as much as possible, cut-throat competition, crosshaul of sugar, and other similar practices, all of which tend to depress the receipts for sugar and benefit principally the transportation companies and some of the dealers in sugar to the detriment of perhaps both the customer and the grower of beets, as well as, of course, the processor of such beets.

Concerning the second objection, the points are not well taken. The Clarksburg factory was built for the crop of 1935. At that time a beet purchase contract was established, which presumably was satisfactory for the 1936 crop, and this company operated that plant first in 1936, and the scale was increased. Following the 1936 crop and prior to [24] the enactment of the Sugar Act of 1937, the scale was further increased by an additional participation on the part of the grower of beets by dividing the returns from sugar on a basis of 60% to the grower and 40% to the factory if sugar netted above \$3.50 and on up to \$3.75, with a further split on a basis of 70% to the grower and 30% to the processor if sugar netted above \$3.75 and on up to \$4.50. This additional participation was introduced at a time when there was no tax on sugar and was to take care of additional payments to growers in the event of the absence of a tax and higher nets, and I think amply does so, having in mind the possibility of increased costs of processing beets due to inflation or war or such other factors as labor pressure. Already many items—especially steel, hardware, pipe and

fittings, brass and copper goods—have increased substantially. Sugar bags cost several cents more I believe than six months ago. There are likely to be further increases in the cost of materials, and probably also in factory labor.

Concerning the third objection, covering the proposed deduction should sugar fall below \$3.25 net, this was based on the information that the Administration and others were advocating an increase in the tax and an increase in the benefit payments to growers. If this tax is not increased it is not at all likely that sugar will drop below \$3.25, in which event there will be no application of this formula, and [25] the grower will not be hurt. But also I feel the factories need some protection in the event of extreme, radical legislation covering our industry. You state that the growers feel the Company is making great profit. You know from the annual report last issued that the income for the fiscal year ending with April 1st last was \$454,000.00, of which \$128,000.00 was income from Company farm and livestock feeding operations, leaving a very nominal return from sugar operations, especially having in mind the largest operations in the history of the Company were for the 1938 campaign. For that year our income from our farm operations was much greater proportionately than it was from sugar operations.

I am passing these brief statements on to you for your own information, as you undoubtedly will find it necessary from time to time to discuss this subject with various individuals.

I understand that both Spreckels and Holly have their beet purchase contracts in the field now. If you have learned anything of their reception in their territories, I should appreciate it if you will let me know.

With kindest personal regards.

Yours very truly,

H. E. Zitkowski, Vice President

HEZ:IM

[26]

American Crystal Sugar Company
Intra-Company Correspondence

Air Mail

Clarksburg, Calif.

Attention of Mr. H. E. Zitkowski

Sept. 27, 1940

Vice President

Denver Office

I am enclosing a clipping from the "Woodland Democrat" concerning the meeting of the beet growers held in Woodland last Wednesday night.

I did not attend the meeting at Clarksburg last night as after quite a little consideration, we decided that probably the growers would express themselves more freely if no representative from the Company were there. I did, however, happen to be at the Community Hall for another meeting earlier and talked a few minutes with Gordon Lyons concerning his program. I told him I thought his figures were misleading as he did not have a true picture regarding costs and also that profits were certainly far below what he would make them out to be.

This morning, George Holmes came in and gave me a fair outline of what the meeting amounted to and what they were attempting to do.

I think most of the growers here feel they have been treated fairly although naturally they want more money per ton of beets. I think they also realize that the profits [27] of the Company are certainly not exorbitant.

I believe there are two things to which the growers chiefly object. The first is the net sales price based on the average of the three companies; and the other is the deduction of $1\frac{1}{2}\%$ for each 5c below \$3.25. They feel that the 50-50 contract should be carried in the lower bracket. As far as I can find out, there was no demand for 50% of the pulp and molasses, although at Woodland, I noticed in the paper that they demand 50% of the sugar on a 92% extraction and also 50% of the pulp and molasses.

The Committee figures on holding meetings in all sections as you will notice, and the Executive Committee would like to meet at Stockton and form a plan, then later meet with the representatives of the Company about the fifteenth of the month in order to discuss the new program.

As far as the allotment for 1941 is concerned, it is my understanding that George Wilson is not entirely satisfied with the program until further discussion is had clarifying some of the points. George Holmes also states that today he has not made up his mind as it seems rather unwieldy.

We are still experiencing considerable difficulty in the Islands in getting beets and also some dif-

ficulty at the Mormon Dock in handling cars. However, I believe we now have this taken care of as we have purchased a lot of second-hand [28] cable and intend to run a sort of block and tackle in order that we can move the cars slower and with less effort. It has also been necessary to change crane operators, due to stalling.

We will have a detailed report for you shortly on Mandeville.

Very truly yours,

Lester J. Holmes, Manager

L.J.H.

LJH:AC

Interrogatory No. 26

Set forth a copy of said statement. (1938 crop year for Clarksburg.)

Answer to Interrogatory No. 26

Haskins & Sells

August 21, 1939

Certified Public Accountants

Denver National Building

Denver

American Crystal Sugar Company,

Denver, Colorado

Dear Sir:

We have made an examination of your records for the year ended July 31, 1939, for the purpose of ascertaining the average net return per one hundred pounds of sugar received from sugar manufactured at your Clarksburg, [29] California factory.

Such net return averages \$3.2973 per one hundred pounds as shown in the following tabulation:

Gross sales, less allowances.....	\$4.4545		
Less:			
Freight on sugar to destination.....	\$.1912		
Cash discount .....	.0881		
Federal excise tax on the manufacture of sugar, applicable to the sugar sold	.5347	.8140	\$3.6405
		<hr/>	<hr/>
Less selling expenses:			
Insurance	\$.0159		
State taxes, and personal property taxes on sugar	.0423		
Storage (exclusive of storage in Company- owned warehouses) .....	.1085		
Shipping and handling charges (including cost of special packing) .....	.0676		
Brokerage and commission.....	.0466		
Miscellaneous (including sales department sal- aries and expenses, losses on accounts, etc.)..	.0623	.3432	
		<hr/>	<hr/>
Net return			\$ 3.2973

Yours truly,

(Signed) Haskins & Sells.

[30]

Interrogatory No. 32

How and in what manner and when was the certified public accountant referred to under par. 6 of the agreement between Crystal and its growers chosen by the "companies" for (a) the cropping year 1939, (b) the cropping year 1940 and (c) the cropping year 1941?

Answer to Interrogatory No. 32

The three companies involved agreed to the appointment of the certified public accountant referred to in this Interrogatory. Such agreement resulted

from written communications between representatives of the said companies, and while there may have been conferences, too, if so, no details relating thereto are recalled. Crystal is not certain as to the dates on which the said accountant for the designated years was chosen, but the choice was made for the respective years on or before July 20, 1940, July 23, 1941, August 5, 1942.

It is assumed that Interrogatories 33 to 40, both inclusive, refer to and are connected with Interrogatory 32, and answers to 33 to 40 have been accordingly made. (Reporter's note: The interrogatory numbers referred to in the last above paragraph are the original Nos. 33 to 40.) [31]

Interrogatory No. 33

Who, on behalf of Crystal, took part in choosing said certified public account?

Answer to Interrogatory No. 33

W. N. Wilds and W. E. Kraybill.

Interrogatory No. 38

If this notification was in writing, set forth the copy of the writing. If oral, set forth the time, place and parties present and give the conversation.

Answer to Interrogatory No. 38

Assuming, again, that this Interrogatory refers to notification to the certified public accountant referred to in Interrogatory 32 (original number), the notification was not in writing. As stated in the

Answer to Interrogatory 37 (original number), R. H. Graham, on behalf of Crystal, gave notice to the accountant on the dates set forth in the Answer to Interrogatory No. 32 (original number). The substance of the conversation in connection with the notification of employment for the crop year 1939 was that the accountant was to determine the average net returns received for sugar manufactured at beet sugar factories located in California north of the 36th parallel, in accordance with the provisions of Crystal's contract for that year. The accountant had the individual net returns from sugar sold from Crystal's Clarksburg, California factory, and also the [32] individual net returns for sugar sold from the factories of Holly Sugar Corporation located in California north of the 36th parallel. The accountant was instructed to combine these figures with the individual net returns for sugar sold from the factories of Spreckels Sugar Company located in California north of the 36th parallel, and which figures were to be furnished by the firm of Lybrand, Ross Brothers & Montgomery, of San Francisco, California. It was understood that in accordance with the code of ethics governing accounting firms, no information obtained from any one of the three companies was to be disclosed to anyone else. Charges made by the said accountant in combining the figures were to be paid one-half by Crystal and one-half by Holly Sugar Corporation. In view of the many years during which the designated accountant had calculated and certified net returns received for sugar sold from factories of Crystal and other sugar

companies, no detailed instructions were necessary to guide the accountant in arriving at the average net return of the three companies, as provided in Crystal's contract for the year 1939. After the engagement of the accountant for the cropping year 1939, the subsequent engagements for the crop year 1940 and 1941 were merely routine—directing the accountant to perform the same duties which had been performed in determining the net returns for the crop year 1939. [33]

Interrogatory No. 40

Set forth copies of all correspondence between the accountant and Crystal regarding his appointment, his notification and his functioning under the appointment and regarding his report or reports.

Answer to Interrogatory No. 40

Included in the answer were the following documents:

Haskins & Sells August 19, 1940

Certified Public Accountants

Denver National Building

Denver

American Crystal Sugar Company,

Denver, Colorado

Holly Sugar Corporation,

Colorado Springs, Colorado

Dear Sirs:

We have made an examination of your records for the year ended July 31, 1940 for the purpose of

ascertaining the average net return (per one hundred pounds of sugar) received from sugar sold and delivered during the year which was produced at your northern California factories.

We have received a certificate from Messrs. Lybrand, Ross Bros. & Montgomery following an examination made by them for the year ended July 31, 1940 in respect of [34] Spreckels Sugar Company.

The average net return per one hundred pound bag of sugar sold and delivered during the year, which was produced at the northern California factories of American Crystal Sugar Company, Holly Sugar Corporation, and Spreckels Sugar Company, amounted to \$3.131 as shown in the following tabulation:

Gross receipts from sales, less cash discounts and allowances			\$ 4,388
Less:			
Federal excise tax.....	\$.535		
Freight on sugar to destination.....	.479	1.014	\$3.374
		<hr/>	<hr/>
Less sales and marketing expenses:			
Insurance on sugar only.....	\$.009		
State taxes, and personal property taxes on sugar	.021		
Storage on sugar (no charge is made for storage of sugar while in operative factory warehouses)	.060		
Loading, handling, reconditioning, and additional cost of packing in small packages.....	.053		
Brokerage and commissions .....	.051		
Miscellaneous, including sales department salaries and traveling expenses, advertising, telephone and telegraph expense, losses on accounts, etc.	.049	.243	
		<hr/>	<hr/>
Net return from sales.....			\$3.131

Your truly,

(Signed) Haskins & Sells

Haskins & Sells

August 22, 1941

Certified Public Accountants
Denver National Building
Denver

American Crystal Sugar Company,
Denver, Colorado

Attention: Mr. W. N. Wilds

Dear Sirs:

We enclosed four copies of our letter report dated August 22, 1941 covering the average net return (per one hundred pounds of sugar) received from sugar sold and delivered during the year ended July 31, 1941, which was produced at the Northern California factories of American Crystal Sugar Company, Holly Sugar Corporation, and Spreckels Sugar Company.

Yours very truly,

(Signed) Haskins & Sells

Enclosures

[36]

Haskins & Sells

Certified Public Accountants

Denver National Building, Denver

American Crystal Sugar Company,

Denver, Colorado

Holly Sugar Corporation,

Colorado Springs, Colorado

Dear Sirs:

We have made an examination of your records for the year ended July 31, 1941 for the purpose of ascertaining the average net return (per one hundred pounds of sugar) received from sugar sold and delivered during the year which was produced at your northern California factories.

We have received a certificate from Messrs. Lybrand, Ross Bros. & Montgomery following an examination made by them for the year ended July 31, 1941, in respect of Spreckels Sugar Company.

The average net return per one hundred pounds of sugar sold and delivered during the year, which was produced at the northern California factories of American Crystal Sugar Company, Holly Sugar Corporation, and Spreckels Sugar Company, amounted to \$3.160 as shown in the following tabulation: [37]

Gross sales, less cash discounts and allowances.....	\$4.455		
Less:			
Federal excise tax.....	\$535		
Freight on sugar to destination.....	.468	1.003	\$3.452
		—	—
Less sales and marketing expenses:			
Insurance on sugar only.....	\$.007		
States taxes, and personal property taxes on sugar	.031		
Storage on sugar (no charge is made for storage of sugar while in operative factory warehouses)	.071		
Loading, handling, reconditioning, and additional cost of packing in small packages.....	.071		
Brokerage and commissions.....	.051		
Miscellaneous, including sales department sal- aries and traveling expenses, advertising, tele- phone and telegraph expense, losses on ac- counts, etc. ....	.061	.292	
		—	—
Net return from sales.....			\$3.160

Yours truly,

(Signed) Haskins & Sells [38]

Haskins & Sells August 22, 1942
Certified Public Accountants
Denver National Building, Denver

American Crystal Sugar Company,
Denver, Colorado

Attention: Mr. W. N. Wilds

Dear Sirs:

We enclose four copies of our letter report dated August 22, 1942 covering the average net return (per one hundred pounds of sugar) received from sugar sold and delivered during the year ended July 31, 1942, which was produced at the northern Cali-

fornia factories of American Crystal Sugar Company, Holly Sugar Corporation, and Spreckels Sugar Company.

Yours very truly,

(Signed) Haskins & Sells

Encs.

Haskins & Sells

August 22, 1942

Certified Public Accountants

Denver National Building, Denver

American Crystal Sugar Company,

[39]

Denver, Colorado

Holly Sugar Corporation,

Colorado Springs, Colorado

Dear Sirs:

We have made an examination of your records for the year ended July 31, 1942 for the purpose of ascertaining the average net return (per one hundred pounds of sugar) from sugar sold and delivered during the year which was produced at your northern California factories.

We have received a certificate from Messrs. Lybrand, Ross Bros. & Montgomery following an examination made by them for the year ended July 31, 1942, in respect of Spreckels Sugar Company.

The average net return per one hundred pounds of sugar sold and delivered during the year, which was produced at the northern California factories of American Crystal Sugar Company, Holly Sugar Corporation, and Spreckels Sugar Company,

amounted to \$3.950 as shown in the following tabulation:

Gross sales, less cash discounts and allowances.....	\$5.132		
Less:			
Federal excise tax	\$.535		
Freight on sugar to destination.....	.352	.887	\$4.245
		<hr/>	<hr/>
Less sales and marketing expenses:			
Insurance on sugar only.....	\$.007		
State taxes, and personal property taxes on sugar	.040		
Storage on sugar (no charge is made for storage of sugar while in operative factory warehouses)	.056		
Loading, handling, reconditioning, and additional cost of packing in small packages.....	.077		
Brokerage and commissions.....	.042		
Miscellaneous, including sales department salaries and traveling expenses, advertising, telephone expense, losses on accounts, etc.....	.073		\$.295
		<hr/>	<hr/>
Net return from sales.....			\$3.950

Yours truly,

(Signed) Haskins & Sells

Interrogatory No. 50

Set forth month by month the amount of sugar beets received by Crystal from each of plaintiffs in this action for the 1939, 1940 and 1941 cropping seasons. [41]

Answer to Interrogatory No. 50

From Mandeville Island Farms

	1939	1940
August	2,089 tons	4,430 tons
September	5,629 tons	2,308 tons
October	7,978 tons	10,912 tons

November	6,660 tons	5,846 tons
December	.....	1,934 tons
	<hr/>	<hr/>
Total	22,356 tons	25,430 tons

From Roscoe C. Zuckerman
1941

September	1,558 tons
October	8,172 tons
November	3,250 tons
December	1,166 tons
	<hr/>
Total	14,146 tons

Interrogatory No. 51

Set forth month by month the place at which beets received by Crystal from plaintiffs for each of the cropping seasons 1939, 1940 and 1941 were processed and the amount processed at each place so shown. [42]

Answer to Interrogatory No. 51

	Processed at Oxnard			Processed at Clarksburg		
	1939	1940	1941	1939	1940	1941
August				X	X	
September	X	X	X	X		
October	X	X	X	X	X	
November	X		X	X	X	X
December					X	X

It is not possible to determine the amount of beets processed at each place as requested in Interrogatory 51 (original number), as the beets have lost their identity, and no weights are obtained sub-

sequent to the first weights obtained at the time the beets are delivered to the receiving station. The weight of beets processed is at all times less than the weight purchased.

Interrogatory No. 52

Were any of the beets produced by either of plaintiffs during the cropping years 1939, 1940 or 1941 shipped to or processed into sugar at a factory located outside of that portion of California lying north of the 36th parallel, and if so state

(a) The date of each such shipments left San Joaquin or Sacramento counties: [43]

Answer to Interrogatory No. 52 and (a)
(respectively)

Yes.

(a) It is not possible to answer this sub-head of the Interrogatory since on the date the shipments left San Joaquin or Sacramento counties the beets had lost their identity as plaintiffs' beets.

Interrogatory No. 52 (b)

(b) The date each shipment arrived at the refinery where they were processed;

Answer to Interrogatory No. 52 (b)

(b) Because of loss of identity as explained in (a) above, this sub-head of the Interrogatory cannot be answered.

Interrogatory No. 52 (c)

(c) The weight at point of commencement of shipment of the beets involved in each shipment;

Answer to Interrogatory No. 52 (c)

(c) See answer to (a) above.

Interrogatory No. 52 (d)

(d) The weight at point of destination of the beets involved in each shipment;

Answer to Interrogatory No. 52 (d)

(d) See answer to (b) above.

Interrogatory No. 52 (e)

(e) The place where the sugar content and weight of the [44] beets were determined in so far as payment to plaintiffs was concerned.

Answer to Interrogatory No. 52 (e)

(e) The sugar content was determined at Clarksburg, California.

The gross weight was determined at the scales of the beet dump where beets were originally received.

Interrogatory No. 54

If the answer to either item 52 (original number) or 53 (original number) was in the affirmative, state whether the net returns from the sale of sugar produced from said beets processed outside of that portion of California which is located north of the 36th parallel was included in determining the "average net returns" for growers in California north of the 36th parallel under pars. 5 and 6 of the 1939, 1940 or 1941 contracts.

Answer to Interrogatory No. 54

No.

Interrogatory No. 55

If the answer to either Interrogatories 52 or 53 was in the affirmative, state whether the net return from the sale of sugar produced from such beets was included in determining the payment to growers who produced beets in California south of the 36th parallel and who delivered them to Crystal. (Nos. 52 and 53 above are original numbers.) [45]

Answer to Interrogatory No. 55

Yes.

Interrogatory No. 58

Was this amount arrived at by averaging the net return of American Crystal with the net return of any one or more refineries and if so what refineries?

Answer to Interrogatory No. 58

Although it is not free from doubt whether Interrogatory 58 (original number) and each succeeding Interrogatory through No. 70 (original number) refer to the 1939 grower contract and settlement thereunder, it has been assumed that such is the case, and the Answers to said Interrogatories have been made on that assumption.

The figure given in the Answer to Interrogatory 57 (original number) was arrived at by averaging the net return received by Crystal for sugar sold from its Clarksburg, California factory, with the net return received by Holly Sugar Corporation for sugar sold from its factories at Alvarado, California, Tracy, California, and Hamilton City, California,

and the net return received by Spreckels Sugar Company for sugar sold from its factories located at Spreckels, California, Manteca, California, and Woodland, California.

Interrogatory No. 61

Who determined the average net return of Crystal that [46] was used in determining the average of the companies and how was it determined?

Answer to Interrogatory No. 61

In obtaining the return for the contract year ended July 31, 1940 (the 1939 crop year), the average net return for each of the three companies was not required and accordingly there was no weighting of averages. The average net return per one hundred pounds of sugar sold during the year which was produced at the factories of American Crystal Sugar Company, Holly Sugar Corporation, and Spreckels Sugar Company, (all located in California north of the 36th parallel), represented the result of dividing the total dollar amount of net return from sales (gross receipts from sales less cash discounts and allowances, Federal excise tax, freight, and sales and marketing expenses) by the total number of 100 pound bags sold. The determination was made by Haskins & Sells.

Interrogatory No. 62

Set forth the figures and the method of calculation and the calculation from which the average net return of Crystal was determined.

Answer to Interrogatory No. 62

Number of Bags of Sugar Sold (expressed in terms of 100 lbs. to a bag).....	816,009
<hr/>	
Gross Receipts from Sales, Less Cash Discounts and Allowances	\$ 3,585,216.43
Less:	
Federal excise tax.....	\$ 436,146.05
Freight on sugar to destination.....	357,582.96
<hr/>	
Total.....	\$ 793,729.01
<hr/>	
Remainder.....	\$ 2,791,487.42
<hr/>	
Less Sales and Marketing Expenses:	
Insurance on sugar only.....	\$ 11,647.70
State taxes, and personal property taxes on sugar....	37,847.67
Storage on sugar (no charge is made for storage of sugar while in operative factory warehouses).....	75,125.26
Loading, handling, reconditioning, and additional cost of packing in small packages.....	53,381.32
Brokerage and commissions.....	39,002.25
Miscellaneous, including sales department salaries and traveling expenses, advertising, telephone and telegraph expense, losses on accounts, etc.....	25,885.10
<hr/>	
Total sales and marketing expense.....	\$ 242,889.30
<hr/>	
Net Return From Sales.....	\$ 2,548,598.12
<hr/>	

Also see answer to Interrogatory 96 (original number). [48]

Interrogatory No. 86

Do you know of any instance or instances in which any of said three manufacturers of sugar beets other than Crystal bought sugar beets from any grower in California north of the 36th parallel who did not buy sugar beet seeds from that manufacturer and if so set forth, for each instance, the name of

the manufacturer and the name of the grower, and the approximate dates.

Answer to Interrogatory No. 86

No.

Interrogatory No. 87

The answer of Crystal admits the authenticity of the form and contents of those certain contracts, copies of which are annexed to the amended complaint as Exhibits A, B, C and D. Exhibit B is the 1939 Grower Contract. It provides in par. 5 that the price to be paid the grower should be determined upon the average net returns received for sugar manufactured at beet sugar factories located north of the 36th parallel and sold during the period therein set forth. Exhibit A is the 1938 contract. This provides that the price to be paid the grower should be determined upon the average net return received by Crystal from sugar manufactured at its Clarksburg factory and sold by it during a specified period. Was this change in the method of payment from the 1938 method of using average net return from sugar [49] manufactured at Crystal's Clarksburg factory to 1939 method of using the average net return of all beet sugar factories in California north of the 36th parallel, made with or without consultation, discussion or conference by Crystal with any of the other manufacturers of sugar in California north of the 36th parallel?

Answer to Interrogatory No. 87

The change referred to in this Interrogatory was made with consultation, discussion or conference

by Crystal with the other manufacturers of sugar in California north of the 36th parallel.

Interrogatory No. 90

When did Crystal acquire its Clarksburg factory; how did it acquire it; and what was the cost of the factory and the cost of its equipment?

Answer to Interrogatory No. 90

Crystal acquired its Clarksburg factory on April 16, 1936 from The Amalgamated Sugar Company through an exchange of assets. At the time of acquisition a value of \$1,116,162.44 was allocated for the Clarksburg factory site, buildings, and equipment. Our records do not disclose separately the cost of the factory and the cost of its equipment.

Interrogatory No. 91

What other beet sugar factories were acquired by Crystal [50] from January 1, 1937 to December 31, 1943 and what was the location and cost of each factory and what was the cost of the equipment of each?

Answer to Interrogatory No. 91

No other beet sugar factories were acquired by Crystal during the designated period.

Interrogatory No. 96

It is alleged in sub-paragraph (m) of paragraph V of the answer herein that the net sales return secured from sugar sold by defendant from its Clarksburg, California, factory was in 1939 \$3.123, 1940 \$3.163, in 1941 \$3.970. Set forth an itemized breakdown of said figures for each year, showing all items of income and all items of expenditure that entered into said figures. [51]

AMERICAN CRYSTAL SUGAR CO.—Itemized Breakdown of Net Sales Return Per Cwt. for Years Shown Below

	1939	1940	1941	1941
Gross receipts from sales, less cash discounts and allowances.....	\$4.394	\$4.450	\$5.081	
Less:				
Federal Excise Tax.....	\$.535	\$.535	\$.535	
Freight on sugar to destination.....	.438	.922	.322	.857
	<hr/>	<hr/>	<hr/>	<hr/>
	.973	\$3.421	\$3.528	\$4.224
Less Sales and Marketing Expenses:				
Insurance on sugar only.....	.014	.014	.007	
State Taxes, and personal property taxes on sugar.....	.047	.078	.060	
Storage on sugar (no charge is made for storage of sugar while in operative factory warehouses)	.092	.113	.052	
Loading, handling, reconditioning and additional cost of packing in small packages.....	.066	.065	.061	
Brokerage and Commissions.....	.048	.048	.038	
Miscellaneous, including sales department salaries and traveling expenses, advertising, telephone and telegraph expense, losses on accounts, etc. ....	.031	.047	.036	.254
	<hr/>	<hr/>	<hr/>	<hr/>
Net return from sales.....	\$3.123	\$3.163	\$3.970	

Interrogatory No. 107

Do you know of any instance in California north of the 36th parallel during the cropping years 1937, 1937, 1948, 1942 or 1943 in which any manufacturer of sugar from sugar beets paid the grower of sugar beets a price not determined by the net returns from the sale of sugar manufactured in California north of the 36th parallel by the particular manufacturer or by a particular factory or factories of that manufacturer, and if so state the time and place of each of such instances, the name of the grower and the name of the manufacturer.

Answer to Interrogatory No. 107

Crystal is informed and believes that during the cropping years 1937, 1938, 1942 and 1943, sugar beets were grown north of the 36th parallel and processed by the Union Sugar Company factory at Betteravia, California, and that the said Company, the processor of such beets, paid the growers of the beets on a price that was not based on the net returns from the sale of sugar manufactured in California north of the 36th parallel. Names of such growers are not known.

Crystal paid in the cropping year 1942 for early delivered beets \$1.00 per ton the first week, 70 cents the second week and 35 cents the third week, these payments in addition to the scale price. Crystal also paid for 1942 [54] beets a bonus of 50 cents per ton above the scale price.

1943 crop beets were purchased under the Commodity Credit Corporation Support Program, and Crystal, as well as all other processors, paid to the

growers a price not based upon the net returns from the sale of 1943 crop sugar. The price Crystal paid was composed of a base payment, a support payment established by Commodity Credit Corporation, an early delivery incentive of 25 cents per ton and an incentive payment of \$1.00 per ton.

While other companies entered into contracts at least for the 1942 crop season with growers north of the 36th parallel which provided for payment of beets in addition to the price determined (in part) by the net returns as described in this Interrogatory, Crystal does not know whether such additional payments were made.

(While the Interrogatory includes the year 1938, it has been assumed, in this Answer, that 1938 was intended.)

Interrogatory No. 110

Do you know of any instance in which any manufacturer of sugar from sugar beets in California north of the 36th parallel purchased sugar beets during the cropping years 1939, 1940 and 1941 from a grower for manufacture into sugar, which manufacturer did not purchase the same under a contract which provided that the price to be paid to the grower should be determined upon the average net returns from the sale of [55] raw sugar of all sugar manufactured in manufacturing plants in California north of the 36th parallel. If so, state the name of the grower, the name of the manufacturer and the date.

Answer to Interrogatory No. 110

No.

Interrogatory No. 113

When did Crystal make final settlement under its agreement with sugar beet growers in California north of the 36th parallel

- (a) for the cropping year 1937;
- (b) for the cropping year 1938;
- (c) for the cropping year 1939;
- (d) for the cropping year 1940;
- (e) for the cropping year 1941;
- (f) for the cropping year 1942;
- (g) for the cropping year 1943.

Answer to Interrogatory No. 113

- (a) Between August 1 and August 31, 1938
- (b) Between August 1 and August 31, 1939
- (c) Between August 1 and August 31, 1940
- (d) Between August 1 and August 31, 1941
- (e) Between August 1 and August 31, 1942
- (f) Between August 1 and August 31, 1943
- (g) On or before the 15th day of the month following the delivery of beets to Crystal. [56]

Interrogatory No. 121

Did you have any knowledge or information sufficient to form a belief as to whether or not growers of sugar beets in California north of the 36th parallel could or could not have sold their beets at a profit to any manufacturer of sugar other than Crystal, Holly Sugar Corporation or Spreckels Sugar Company, during any of the cropping years 1937 to 1942, both inclusive, and if so, state that knowledge or information.

Answer to Interrogatory No. 121

No.

Interrogatory No. 122

Have you any knowledge or information sufficient to form a belief as to whether or not sugar beet seeds were available to growers of sugar beets in California north of the 36th parallel from any source other than Crystal, Holly Sugar Corporation or Spreckels Sugar Company during any of the cropping years 1937 to 1942, both inclusive, and if so, state what knowledge or information.

Answer to Interrogatory No. 122

No.

Interrogatory No. 123

Did Crystal sell or supply sugar beet seeds to any grower or producer of sugar beets in California north of the 36th parallel during the cropping years 1938 to 1941, both [57] inclusive, who did not contract with it under one of its grower contracts, Exhibits A, B, C and D, respectively, of the amended complaint?

Answer to Interrogatory No. 123

Crystal did sell or supply sugar beet seeds to growers of sugar beets in California north of the 36th parallel during the cropping years 1938 to 1941, both inclusive, who did not contract with it under one of its grower contracts, Exhibits A, B, C and D, respectively, to the amended Complaint, since seeds were furnished to the Company's growers north of the 36th parallel who had signed Crystal's Oxnard factory contracts. Crystal may have also sold

or supplied sugar beet seeds to other growers or producers of sugar beets in California north of the 36th parallel during the designated years who did not contract with it as stated in the Interrogatory, since there have been instances in which beet seeds have been sold and delivered to prospective growers who did not subsequently contract with Crystal for the growing of beets. No specific instances in which this occurred are known to Crystal.

Interrogatory No. 132

What were the annual upkeep and operating expenses of the factory of Crystal in California north of the 36th parallel during each of the years 1937 to 1943, both inclusive? [58]

Answer to Interrogatory No. 132

There are inadequate criteria in this Interrogatory to guide Crystal in answering. And there is considerable diversity of opinion among accountants as to what constitutes "annual upkeep and operating expenses." However, the following figures have been prepared, which Crystal feels fairly reflect "annual upkeep and operating expenses," as requested. The figures include Labor, Supplies, Maintenance and Repairs, Local General Expenses, Insurance, Taxes and Depreciation.

1937	\$600,717.91
1938	564,561.99
1939	675,918.87
1940	729,205.45
1941	673,831.73
1942	759,930.73
1943	542,359.71

Interrogatory No. 137

If your answer to the preceding interrogatory was in the negative, then set forth the method of pricing used by Crystal in the sale of sugar during each of the years 1937, to 1943, both inclusive?

Answer to Interrogatory No. 137

Sales of sugar made by Crystal during each of said years were made at prices determined by the price of cane [59] sugar at the Seaboard cane sugar refineries, such as San Francisco, New York, or New Orleans, adding such freight as there may have been from the refinery point producing the lowest price at the destination, subject always to the prevailing differential between the price of *cane* sugar and beet sugar, and further subject to such adjustments as were necessary to meet the competition of other sellers of sugar.

Interrogatory No. 138

During the years 1937 to 1943, both inclusive, when Crystal sold sugar for delivery to a given point in the United States, was the price in any way affected by the location of the particular factory at which the sugar was manufactured and if so state how or in what manner?

Answer to Interrogatory No. 138

No.

Interrogatory No. 139

During each of said years, when sugar was shipped from the Clarksburg, California, factory to Crystal to a purchaser in

- (a) Stockton, California,
- (b) Sacramento, California,
- (c) Portland, Oregon,
- (d) Los Angeles, California,
- (e) Salt Lake City, Utah,
- (f) Denver, Colorado, [60]
- (g) Phoenix, Arizona,

was the price the San Francisco price, plus freight from San Francisco? If the answer is in the affirmative, state in which of said years that situation applied. If the answer is in the negative, set forth what the pricing method was.

Answer to Interrogatory No. 139

The price of sugar shipped, if any, from the Clarksburg, California, factory to the destinations named in this Interrogatory, in each of the years 1937-1943, both inclusive, was the San Francisco price of cane sugar (less the prevailing differential between the price of cane sugar and beet sugar) plus the freight from San Francisco, subject to adjustments necessary to meet the competition of other sellers of sugar.

Interrogatory No. 140

During each of said years, when sugar was shipped from the southern California factory of Crystal to a purchaser in

- (a) Stockton, California,
- (b) Sacramento, California,
- (c) Portland, Oregon,
- (d) Los Angeles, California,
- (e) Salt Lake City, Utah,

(f) Denver, Colorado,

(g) Phoenix, Arizona,

was the price the San Francisco price, plus freight from [61] San Francisco? If the answer is in the affirmative, state in which of said years that situation applied. If the answer is in the negative, set forth what the pricing method was.

Answer to Interrogatory No. 140

The price of sugar shipped, if any, from the Oxnard, California, factory to the destinations named in this Interrogatory, in each of the years 1937-1943, both inclusive, was the San Francisco price of cane sugar (less the prevailing differential between the price of cane sugar and beet sugar) plus the freight from San Francisco, subject to adjustments necessary to meet the competition of other sellers of sugar.

By way of a general preface to the answers to Interrogatories 145 to 167, both inclusive, (original numbers) Crystal states that during the periods involved in the "Additional Interrogatories," the Company had few growers north of the 36th parallel who contracted with the Company's Oxnard factory, as will more fully appear from the answers; that, generally speaking, all of such growers delivered their beets to the Company's dump at Tagus, California; that conceivably some beets delivered at Tagus may have been grown south of the 36th parallel; that it is also conceivable that some few beets grown north of the 36th parallel were delivered to Crystal at a beet dump south of the parallel;

[62] that the variation one way or the other, if any, would be inconsequential in relation to the total figures involved. An exact determination as to the source of each ton of beets grown in this border area, that is, whether grown north or south of the 36th parallel, would involve an attempt to reconstruct facts and records, which would almost certainly be impossible at this date, and an inspection and perhaps a survey of each farm near the parallel from which beets were delivered during the years covered by the Interrogatories. In view of these circumstances, Crystal has assumed, in preparing the answers to Interrogatories 145 to 167 (original numbers), both inclusive, that all beets grown north of the 36th parallel under contracts with Crystal's Oxnard factory, and only such beets, were delivered at the Tagus, California, beet dump.

Interrogatory No. 145-C

Plaintiff Mandeville delivered in the 1939 season 22,355.6 tons of sugar beets of 18.25% sugar content. What would have been paid to a grower who signed an Exhibit 14 type of contract who delivered to Crystal in that season sugar beets of that quantity and quality?

Answer to Interrogatory No. 145-C

\$125,154.36. [63]

Interrogatory No. 145-D

Plaintiff Mandeville delivered in 1940, 25,430.3 tons of sugar beets of 15.55% sugar content. What would have been paid to a grower who signed an

Exhibit 16 type of contract who delivered to Crystal in that season sugar beets of that quantity and quality?

Answer to Interrogatory No. 145-D

\$120,921.08.

Interrogatory No. 145-E

Plaintiff Zuckerman delivered in 1941, 14,144.7 tons of sugar beets of 15.47% sugar content. What would have been paid to a grower who signed an Exhibit 18 type of contract who delivered sugar beets to Crystal in that season of that quantity and quality?

Answer to Interrogatory No. 145-E

\$83,552.74.

Interrogatory No. 146

On page 2 of the Amendment to Answer in subparagraph "m" there appears the following: "Alleges that although it does know the tonnage, at the point of delivery, of the beets produced by plaintiffs, and each of them, and delivered to it, which were subsequently shipped to its refinery in Southern California located at Oxnard, it does not know the tonnage of plaintiffs' beets so shipped at the point of commencement of shipment to said refinery [64] at said Oxnard."

(A) Set forth year by year the tonnage at point of delivery for beets produced by each of the plaintiffs.

Answer to Interrogatory No. 146 (A)

The tonnage of beets delivered by each of the plain-

tiffs at point of delivery, which were subsequently shipped to Crystal's factory at Oxnard, California, during each of the years in question, was as follows:

	Tons	Delivered by
1939	14,348	Mandeville Island Farms, Inc.
1940	13,167	Mandeville Island Farms, Inc.
1941	10,381	Roscoe C. Zuckerman.

Interrogatory No. 146 (B)

As to such beets, were the accountings that were made to plaintiffs by Crystal based on the tonnage of beets at point of commencement of shipment or on the tonnage of beets at point of delivery at Oxnard or at some other point and if so what point?

Answer to Interrogatory No. 146 (B)

The accountings that were made to plaintiffs by Crystal were based on the weight of beets at the time they were delivered to Crystal's receiving stations. See answer to subdivision A of this Interrogatory.

Interrogatory No. 147

It is alleged in subparagraph "n" of said Amendment to [65] Answer, pages 2 and 3, that during the crop years 1939, 1940 and 1941, there were three manufacturers who operated sugar beet factories in Southern California, and that Exhibits 1 to 19 are copies of contracts in force during said periods in Southern California. Exhibits 14 to 19 both inclusive are Crystal contracts and they refer to "the four southernmost beet sugar companies in Southern California." Were there three beet sugar companies in Southern California as alleged in the

Amendment to Answer or four as set forth in said Exhibits, and if four, state their names.

Answer to Interrogatory No. 147

As alleged in paragraph 5 (n) of "Amendment to Answer," during the crop years 1939, 1940 and 1941 there were three manufacturers who operated sugar beet factories in "Southern California." As stated in the exhibits referred to, there were four beet sugar companies who operated in "Southern California"; however, one of the four contracted with growers for the production of sugar beets during the designated years, but did not operate a sugar factory in any of said years.

Interrogatory No. 148

It is alleged in subparagraph "p" of page 3 of the Amendment to Answer that the average joint net returns for sugar manufactured in Southern California during the cropping [66] years 1939, 1940 and 1941 was greater than the average net return for sugar manufactured during the same cropping years in Northern California.

(A) Set forth for each of said years the average net returns for sugar manufactured in Southern California.

Answer to Interrogatory No. 148 (A)

The average net returns, as defined in the contracts of the beet sugar processors who operated in "Southern California" during the designated years, received by the said "Southern California" processors for sugar manufactured at said processors'

“Southern California” factories and sold during the designated crop years are as follows:

1939	3.378c per pound
1940	3.398c per pound
1941	4.066c per pound

Interrogatory No. 148 (B)

(B) Set forth for each of said years the net return of Crystal for sugar manufactured in southern California.

Answer to Interrogatory No. 148 (B)

Crystal’s net returns from the sale of sugar manufactured in its “Southern California” factory and sold during the designated crop years are as follows:

1939	3.155c per pound	
1940	3.227c per pound	
1941	4.068c per pound	[67]

Interrogatory No. 148 (C)

(C) Set forth for each of said years the net return of each of the other companies.

Answer to Interrogatory No. 148 (C)

Crystal does not know the net returns in each or any of the designated years of “each of the other companies”, or any of them.

Interrogatory No. 150

Exhibits 14 to 19 both inclusive provide that Crystal would pay freight on all beets in cars loaded to capacity.

(A) Did Crystal pay such freight during each of said years?

Answer to Interrogatory No. 150 (A)

(A) Yes.

Interrogatory No. 150 (B)

(B) Was such freight included in whole or in part in determining the average net returns under said contracts, and if in part, what part for each of said years?

Answer to Interrogatory No. 150 (B)

(B) No.

Interrogatory No. 150 (C)

(C) Did Crystal pay the freight on the beets produced by plaintiffs which were shipped to the Oxnard factory in 1939, 1940 and 1941? If so, was that freight or any part thereof charged as a part of Northern California operations or [68] Southern California operations or neither? And if so, what part as to each of said years?

Answer to Interrogatory No. 150 (C)

(C) Yes. All charged to "Southern California" operations.

Interrogatory No. 150 (D)

(D) Was such freight in whole or in part included as a cost, expense or charge in determining the average net returns under either the Northern or Southern California contracts for any of said years and if so under which contract for each of said years and in what amounts?

Answer to Interrogatory No. 150 (D)

(D) No.

Interrogatory No. 150 (E) (a)

No specific reference is made to freight in the Northern California contracts for 1939, 1940 and 1941. Who paid the freight or delivery charges on beets produced in Northern California

(a) and transported to Clarksburg during each of said years;

Answer to Interrogatory No. 150 (E) (a)

(E) (a) American Crystal Sugar Company.

Interrogatory No. 150 (E) (b)

(b) and transported to Oxnard during each of said years? [69]

Answer to Interrogatory No. 150 (E) (b)

(E) (b) American Crystal Sugar Company.

Interrogatory No. 151

Set forth by crop years 1939, 1940 and 1941 the total amount of freight and transportation charges upon beets produced during each of said years in Northern California and delivered to defendant and processed in Southern California.

Answer to Interrogatory No. 151

The information requested cannot be furnished due to the fact that some of the pertinent records have been destroyed.

Interrogatory No. 153

Set forth the tonnage of sugar beets produced in California north of the 36th parallel and manufactured into sugar by Crystal in Southern California during each of the crop years 1938, 1939, 1940, 1941 and 1942.

Answer to Interrogatory No. 153

The tonnage of sugar beets produced in California north of the 36th parallel which were shipped by Crystal to its Oxnard, California, factory for manufacture into sugar, for each of the designated years was as follows:

1938	11,745 tons	
1939	39,469 tons	
1940	39,023 tons	[70]
1941	37,089 tons	
1942	14,463 tons	

The figures given above are not to be construed as the tonnage of those beets which were manufactured into sugar by Crystal at its Oxnard, California, factory from beets produced in California north of the 36th parallel.

Interrogatory No. 154

Set forth the tonnage of sugar beets produced in Southern California and manufactured into sugar by Crystal in Southern California during each of the crop years 1938, 1939, 1940, 1941 and 1942.

Answer to Interrogatory No. 154

	Total tons
1938	174,529.9
1939	266,859.6
1940	254,712.5
1941	135,897.8
1942	276,105.1

The figures given above are not to be construed as the tonnage of those beets which were manufac-

tured into sugar by Crystal at its Oxnard, California, factory from beets produced in Southern California, but rather the tonnage of beets "produced" in "Southern California" for manufacture at the Oxnard factory. See answer to Interrogatory 156 (original number). [71]

Interrogatory No. 156

Set forth the total amount of sugar beets manufactured into sugar by Crystal in Southern California in each of the following crop years: 1938, 1939, 1940, 1941 and 1942.

Answer to Interrogatory No. 156

1938	180,794 tons
1939	295,901 tons
1940	284,585 tons
1941	166,714 tons
1942	274,372 tons

Interrogatory No. 160

In answer to Interrogatory 9 (original number), heretofore submitted, it is stated that "some of the sugar beets produced in California north of the 36th parallel and delivered to Crystal were not processed into sugar at Crystal's Clarksburg, California, factory. As to such sugar beets processed elsewhere, their identity as beets in California north of the 36th parallel was lost and consequently the tonnage of sugar manufactured from such transferred beets is not determinable." Is it true that it is impossible for any officer of Crystal to determine from any of its records the amount of sugar manufactured outside of Northern California by Crystal during the

crop years 1939, 1940 and 1941 from sugar beets produced in Northern California? [72]

Answer to Interrogatory No. 160

Yes.

Interrogatory No. 163

With reference to the letter or memorandum that appears at page 29 of the defendant's answers to certain interrogatories, it appears to be signed by the initials "W.E.K." Whose initials are "W.E.K."?

Answer to Interrogatory No. 163

W. E. Kraybill, one of Crystal's officers shown in the answer to Interrogatory 1 (original number).

Interrogatory No. 166

The contracts between Crystal and growers of sugar beets during the cropping years 1939, 1940 and 1941 for Northern California provided that the price to be paid the grower should be determined by a formula in which one of the variables was the net return received for sugar by all the manufacturers of sugar beets in Northern California. The contracts between Crystal and growers of sugar beets in Southern California, Exhibits 14, 15, 16, 17, 18 and 19 provided for payment to the growers by a formula in which one of the variables was the net return received for sugar "by the four southernmost beet sugar companies in Southern California." Were there any beet sugar factories manufacturing sugar from sugar beets in California during the cropping years 1939, 1940 and 1941 other than the four southernmost [73] beet sugar companies in Southern California referred to in Exhibits 14 to

19 inclusive and the sugar beet companies operating in Northern California?

Answer to Interrogatory No. 166

As explained in the answer to Interrogatory 147 (original number) there were only three beet sugar factories in Southern California which manufactured sugar from sugar beets during the cropping years 1939, 1940 and 1941. Those three factories and the factories operating in "Northern California" were the only beet sugar factories manufacturing sugar from sugar beets in California during the designated years.

Interrogatory No. 53—Evans

Were any beets produced by plaintiff during the cropping year 1941 and delivered to American Crystal Sugar Company shipped by said company to its sugar factory at Oxnard, California, and there manufactured into sugar?

Answer to Interrogatory No. 53—Evans

Yes.

Interrogatory No. 54—Evans

If your answer to the preceding interrogatory is in the affirmative, state the quantity of plaintiff's beets that were so shipped.

Answer to Interrogatory No. 54—Evans

Upon delivery of beets by the plaintiff, such beets were loaded onto barges with beets of other growers and at [74] once lost identity as plaintiff's beets; and even if beet dump weights were available, we still could not determine at this time which of said

beets were shipped to Crystal's Oxnard factory and which to the Clarksburg factory.

Interrogatory No. 55—Evans

If your answer to Interrogatory No. 8 (original number) was in the affirmative, state whether the sales of sugar manufactured from said beets (i.e., the beets produced by plaintiff and manufactured into sugar at defendant's Oxnard factory) were included in the Southern California sugar sales or in the northern California sugar sales in determining the price to be paid growers for sugar beets.

Answer to Interrogatory No. 55—Evans

The sales of sugar manufactured from plaintiff's beets shipped to Oxnard for processing were included in Southern California sugar sales. [75]

[Endorsed]: Filed May 4, 1951.

[Title of District Court and Causes No. 4643-8353.]

Los Angeles, California

Monday, March 19, 1951, 11:00 a.m.

The Court: You may proceed.

The Clerk: 4643 and 8353, Mandeville Island Farms and others versus American Crystal Sugar Company.

Mr. Works: We are ready, your Honor.

Mr. Arndt: Ready for the plaintiff.

The Court: How about this question of time, gentlemen? Mr. Arndt has raised the question as to the time element. Mr. Arndt says your motion is too late.

Mr. Arndt: I stated that his motion for a new trial is too late.

The Court: But his motion is to amend the findings.

Mr. Works: There is no motion for a new trial.

Mr. Arndt: A motion to amend the findings was made in time. My position is not supported by affidavits or evidence or anything else.

The Court: I haven't studied this because I haven't had a copy of the findings. What is the citation or what are the findings that are in question here?

Mr. Works: Finding 18-D on page 17, lines 10 to 12.

Your Honor will recall we have gone through four versions of these findings now and have practically cleaned them up with reference to the sugar situation. This is the last reference to sugar in the findings and it appears in the [3] findings as to damages to which it is irrelevant in the first place.

I made this motion because at the last time we discussed these findings your Honor indicated this finding should not be in there and when the findings were signed it was there.

Mr. Arndt: No such thing occurred in my presence. I said I was going to settle them myself. Of course it is true in this case that instead of taking the seeds to the sugar bowl I was only taking them to the refinery and that was the theory upon which I endeavored to hold the findings and let it be covered by the conclusions of law.

Mr. Works: This is the last one on the sugar

situation. We have never taken an exception to your Honor's conclusion of law where the theory is laid out very clearly.

The Court: What portion of it did you make a motion to strike?

Mr. Works: This clause, your Honor:

“If said sugar had been manufactured and sold in interstate commerce in competition with sugar of the co-conspirators, unhampered by said combination and conspiracy——”

That is a left-handed finding.

The Court: I took the position in the trial that we were controlled by the decision of the Supreme Court. I think I remember a request by you for a finding that it did [4] not involve interstate commerce or words to that effect.

Mr. Works: There was no effect upon sugar and your Honor said you wouldn't find either way.

The Court: I made that finding in view of the language of the Supreme Court's decision.

Mr. Works: Your Honor indicated you would not find either way on the question of sugar competition. This is a left-handed finding on that subject.

The Court: Didn't I make a finding to the effect that this dealt entirely with sugar beets within the State of California.

Mr. Arndt: Yes, there is specifically such a finding.

Mr. Works: Yes.

Mr. Arndt: That was one of the things that was added.

Mr. Works: You wanted a finding as to a conspiracy to fix the price of sugar beets when the sugar beets were entirely harvested and processed within the State of California and then manufactured into sugar without crossing state lines.

Mr. Arndt: Has your Honor read my affidavit?

The Court: Yes.

Mr. Arndt: The Zitkowski letter specifically and definitely says that is just what they intend to do. It specifically and definitely says they are going to—they want to stop cut-throat competition in the sale of sugar, [5] and I asked what he meant by that and he said:

“Well, we have to give a discount to certain dealers who are buying sugar from us. We want to stop that.”

That is absolutely uncontradicted, from their own documents, as to the purpose of this conspiracy.

That just can't be brushed aside and ignored. They have offered no explanation of that. They could have brought in someone from the company who could have denied that but they didn't.

He specifically testified that he had in mind the sugar and he specifically testified that it was with reference to cut-throat competition:

“Q. What particular cut-throat competition are you referring to?

“A. Oh, stealing one another's customers.

“Q. You mean by 'customers', growers of beets or just purchasers of sugar?

“A. Purchasers of sugar.”

And then when he spoke about the cross-haul of sugar he specifically testified that meant the sugar and not the beets. In other words this letter specifically ties it into this situation.

The Court: Sugar is like gasoline, counsel. They always maintain the same price wherever they come from; but [6] I have never felt that this conspiracy whereby they fixed the price of beets was a part of a general conspiracy.

Mr. Arndt: But the letter says it was. In other words, the California manager asked the head office:

“What is the purpose of this thing? Why are we adopting this joint method? Why are we all paying the growers the same price”

and here is the answer:

“The principal objective——”

objective of what? Of this joint contract—not a partial objective, but is to obtain,

“as far as this is possible, a higher average net receipt for sugar by avoiding, as much as possible, cut-throat competition, cross-haul of sugar and other similar practices, all of which tend to depress the receipts for sugar and benefit principally the transportation companies and some of the dealers in sugar to the detriment of perhaps both the customer and the grower of beets, as well as, of course, the processor of such beets.”

Now there they set forth the principal objectives to be obtained.

The Court: Well, wouldn't this be true? If they were able to stop cut-throat competition in the sale of sugar wouldn't that inure to the benefit of the grower under [7] ordinary circumstances?

Mr. Arndt: If they had not combined with others regarding the freight. In other words what happened here as shown by the figures I have presented as to the freight, as soon as this conspiracy started the freight rates went up and up and up until the last year. As soon as the conspiracy was over they dropped again. In other words, they were avoiding the cross-haul and doing the various things they are alleged to have done while determining where the sugar was to go.

The Court: That was one of the basic theories upon which I fixed damages. I felt the increase in freight rates was primarily due to the heavy crops.

Mr. Arndt: But the other companies had the same heavy crops therefore they should have had the same increase if there hadn't been some outside motive involved. In other words, the fact that their rates went up to the other companies and practically reached them shows that wasn't the situation. It couldn't have been.

Mr. Works: Your Honor recall the testimony of the two sales managers. Mr. Arndt has been talking about the objective sought to be attained. The undisputed evidence was that assuming such an objective, it never was attained.

The Court: If you think I can recall all of that testimony you are flattering me. [8]

Mr. Works: That is why I am reading it to you. I have it right here. Mr. Hayden was asked:

“Will you please state whether or not the fact that during 1939, 1940 and 1941 these growers were being paid on a joint net basis had any fact whatever on either the price or the supply or competitive condition with reference to sugar?”

His answer was:

“No, sir.”

“Q. When did you first know that the method of paying growers in the Clarksburg district had changed from the net of Clarksburg alone to the joint Holly-Spreckels and Crystal?”

“A. Well, it was some time in recent years, since this litigation started. I didn’t know prior to that time.”

The Court: That is the best kind of evidence you can have, counsel—he didn’t know and there was no change in his methods.”

Mr. Works: Now Hardy. Hardy was the western sales manager:

“Q. From your experience is it or is it not a fact that this situation where the beet growers were paid on a joint net during 1939, 1940 and 1941 had no effect whatever on either price or supply or competitive condition with reference to sugar? [9]

“A. As a matter of fact I didn’t know it was in effect.

“Q. The joint net? “A. No.

“Q. Now, did the utilization of this joint net during those years, as far as you were able to

observe, bring about any change whatever in your territory either in marketing method or efficiency in the sale of sugar, so no matter what the objectives may have been they were not attained?

“A. There was no change whatever either in the efficiency of the marketing method or the price of sugar or in any factor affecting sugar.”

Mr. Works: As your Honor just observed, if the conspiracy had attained the objectives related by Mr. Arndt it would have been to the benefit of the growers themselves because it would have eliminated cost items which it didn't do. That is the whole complaint, that the cost increased rather than decreased.

Mr. Arndt: If the court please, the testimony that counsel has read leaves out most of it. The California representative testified he had nothing to do with the shipment or sales outside of this territory; that the sales were made by the president. That every sale outside of this territory, the first thing he knew about it, was when he received a copy of the report from Denver that it had been made. It was [10] the president who handled all sales outside of this territory. It was the president who handled everything that involved this increase of freight rates. It was the president who took part in all of that.

They didn't put the president on the stand. They brought these men on the stand who knew nothing at all about the situation, who knew nothing about the agreement and who took orders from the president, but the president who alone could have told us what the situation was wasn't produced.

Mr. Works: He gave his deposition.

The Court: I felt that the conspiracy between the refineries had as its real objective the control of the growers and to prevent them from dealing with the refineries that he may have wanted to deal with. In other words, that it more or less limited the grower to the place where he could sell beets and prevented any competition in that respect; but I didn't feel that it had any effect upon the price of sugar in interstate commerce. That is the reason I put everything in my conclusions of law. I assumed that the Supreme Court by its decision, meant "as quickly as you touch sugar you touch interstate commerce." And I still think that is what they intended to say.

I think I mentioned before that as soon as you start to build an oil well you are in interstate commerce whether you hit a dry hole or not. [11]

Mr. Arndt: There is another point involved, if the court please. I feel the court can't under any circumstances—can't grant this motion. It is improperly made. There is not the slightest bit of support for it. There are no affidavits. There is nothing. They just come in and make a motion and say that these findings were improperly made or inadvertently made.

The Court: You will notice in the original I have indicated a question which I hadn't caught before.

Mr. Works: That is right.

The Court: I notice there is a question mark opposite this which is in my handwriting.

Frankly I am trying to make these findings in

order to get a direct ruling from the court on the question of whether sugar and oil are in the same category. You will remember I cut out interstate commerce wherever I could find it.

Mr. Arndt: That was on the basis, as I understood it, that it was a conclusion and not a statement of fact.

The Court: I am not making a finding of fact. If I had made a finding at all I would have made a finding that it did not affect interstate commerce, but I wouldn't do that in view of the Supreme Court's decision.

Mr. Works: We would have been very happy if your Honor had.

The Court: I know you would have been but I couldn't [12] do it in view of the Supreme Court decision.

Mr. Works: Well, the Supreme Court held that a restraint upon sugar had been alleged and it is our position now and will be that that has not been proven. That is the differentiation. But in any event these findings have been cleared upon the interstate commerce situation every place except this one clause and that is all we are asking to have removed. We want it to be consistent with the other findings which your Honor has made.

The Court: And I feel it is inconsistent with the other findings.

Mr. Works: And that is why we make the motion.

Mr. Arndt: I think to ignore this letter in which they give their own explanation of what they are

doing is to commit error. They were the ones who could have explained that letter and they didn't.

Mr. Works: I think I have been very patient throughout this whole case, but your Honor will recall we were ensnared on that first appeal by a situation where we understood and I think your Honor understood—I know I did, that all that was alleged in that complaint——

The Court: Where I made a mistake was not trying the case first.

Mr. Works: That is true.

The Court: I thought I was doing you a favor but instead [13] I have made a lot of extra work.

Mr. Works: I certainly don't want the same situation to happen on this forthcoming appeal that happened on the last one. If this is left in here there will be an argument that your Honor found there was a restraint of competition upon sugar, the interstate product, precisely the same thing that the Supreme Court was dealing with on the first appeal. I don't want to get caught off base again.

The Court: I wouldn't be surprised if the court sends this case back for a specific finding of fact on the sugar, but I have felt I should not do that in view of the Supreme Court's decision.

I viewed that as quite a broad decision. It took in a lot of territory.

Mr. Works: Yes, I think so, too.

The Court: And I personally don't think you are going to get any place on your appeal and that the Supreme Court will hold as I stated before, that sugar is a commodity in interstate commerce—you

can't play with sugar without playing with interstate commerce. If I were to rule on the question that would be my ruling. I am going to grant the motion.

Mr. Works: Thank you, your Honor.

Mr. Arndt: I don't know whether this is a matter that is automatically excepted to or not. This is an unusual motion and therefore may I have an exception? [14]

The Court: Certainly. You will draw the order.

Mr. Works: Yes, your Honor. I will prepare an order and submit it to Mr. Arndt for his approval as to form.

The Court: All right.

(Whereupon the above-entitled proceedings were concluded.) [15]

[Endorsed]: Filed May 16, 1951.

[Endorsed]: No. 12946. United States Court of Appeals for the Ninth Circuit. American Crystal Sugar Company, a corporation, Appellant, vs. Mandeville Island Farms, Inc., a corporation, Roscoe C. Zuckerman and G. K. Evans, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: May 24, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12946

AMERICAN CRYSTAL SUGAR COMPANY, a
corporation,

Appellant,

vs.

MANDEVILLE ISLAND FARMS, INC., a cor-
poration, ROSCOE C. ZUCKERMAN and G.
K. EVANS,

Appellees.

STATEMENT OF POINTS UPON WHICH
APPELLANT AMERICAN CRYSTAL
SUGAR COMPANY INTENDS TO RELY
UPON THE APPEAL

Appellant above named respectfully submits the following points upon which it intends to rely upon the appeal, to wit:

I. The District Court Erred in Rendering Judgment for Appellees and Against Appellant.

(A) The District Court erred in holding and deciding that the decision of the Supreme Court on the prior appeal in *Mandeville Island Farms, Inc., vs. American Crystal Sugar Company* (334 U. S. 219) relieved appellees of the necessity of proving (as distinguished from alleging) that the activities complained of had a substantial economic effect upon interstate commerce.

1. The holding on the prior appeal was that the Mandeville amended complaint stated a cause of action under the Sherman Act; it in no way dispensed with the necessity of proving such cause of action.

(B) The conclusions of law and judgment against appellant are not supported by the findings.

1. In order to warrant a recovery in a treble damage suit under the Sherman Act, a plaintiff must plead and prove, and the trial court must find, that the activities complained of as having caused him damage, had a substantial economic effect upon interstate commerce.

2. The District Court here declined to make any finding whatever as to the issue of effect upon interstate commerce; and it repeatedly eliminated or deleted findings proposed by appellees as to that issue.

3. If the District Court had found that the activities complained of had a substantial economic effect up interstate commerce, such findings would have been clearly erroneous as being contrary to the undisputed evidence.

(a) The undisputed evidence was that the activities complained of had no effect whatever upon the price, supply or competitive conditions with reference to sugar; the only interstate product involved in the case.

II. The District Court Erred in Awarding Damages in the Amounts Specified in the Judgment.

(A) The District Court erred in its application of the measure of damages.

1. The measure of damages is the difference between the amounts actually realized by appellees, during the three crop years involved, from the sale of their beets to appellant, and what would have been realized by them during such period in the absence of the combination complained of.

2. Translated to the facts of this case, and assuming, for purposes of discussion only, that injury from a Sherman Act violation was both proved and found, the proper measure is the excess, if any, and as to each of the three years involved, of the amounts which appellees would severally have received had they been paid for their beets upon the basis of appellant's own net return from sugar sold from its Clarksburg factory, over the amounts which they severally did receive when paid upon the basis of the averaged net returns from sugar sold from the Clarksburg factory and two other factories operated by other sugar companies in northern California.

(a) These are not cases where defendant's acts have prevented plaintiffs from making precise proof of their damages; the amount of such damages, ascertained by the measure properly applicable to these cases, was proven to the penny.

(B) The damages actually awarded were speculative and inconsistent.

Dated: This 25th day of May, 1951.

O'MELVENY & MYERS,
PIERCE WORKS,
JOHN WHYTE,
/s/ By PIERCE WORKS

LEWIS, GRANT, NEWTON,
DAVIS & HENRY
DONALD S. GRAHAM
Of Counsel.

[Endorsed]: Filed May 28, 1951. Paul P. O'Brien,
Clerk.